ERVIN BILL - 92nd Congress

S. 1438 H. R. 12652

Tab

A Letter to DCI Helms frm Chairman Hanley, inviting DCI to testify before H. Subcom. on Employee Benefits at hearings on question of invasion of privacy of Federal employees (see Tab E)

B S. 1438, introduced 1 April 1971; S. Rpt. 92-554

C Letter to Rommel, OMB, frm Maury dtd 12 April 1971 re Hanley letter to DCI

D Excerpt frm Journal of 16 April re Maury's conversation w/Rommel explaining our concern about proposed legislation to ensure privacy of Federal employees

E Letter to Hanley frm Helms dtd 16 April enclosing copies of pertinent correspondence relating to Ervin bill and offering to meet w/Hanley

F Letter to Helms frm Hanley dtd 23 April acknowledging 16 April letter

G Letter to Rommel frm Maury dtd 27 April 1971 enclosing proposed letter to Ervin (see Tab I, letter dtd 21 May for final copy)

H 11 May statement by Ervin before Hanley Subcom. on S. 1438

I Letter to Ervin frm Helms dtd 21 May 1971 requesting complete exemption from S. 1438

J Handout prepared for Hanley Subcom. breakfast at CIA on 9 June 1971
Analysis of Selected Sections of Invasion of Privacy Bills
Two-page explanation of S. 1438
Effect of Certain Provisions of S. 1438

K H. R. 11150, introduced 7 Oct 1971
Letter to Chairman Dulski, Post Office & Civil Service Com., dtd 21 Oct 1971 frm Chairman Hebert, H. Armed Services, re H. R. 11150

L Events concerning S. 1438 as of 2 Dec 1971

M Letter to Mahon, Chairman, H. Appropriations Com., frm Chairman Dulski dtd 23 February 1972 re H. R. 11150

Tab	
N	H. R. 12652 reported w/amends. 1 August 1971: H. Rpt. 92-144 Hearing, "Civil Rights Commission" dtd 7 Aug 1972 Paper entitled "Amendments to H. R. 12652 (Senate Version) for CIA and NSA Exemptions"
O	Letter to Celler, H. Judiciary Committee, frm Chairman Hampton, Civil Service Commission, dtd 10 August 1972 re H. R. 12652 and S. 1438
P	Memo for the Record dtd 23 August 1972, Sub: Conversation with Mr. David Carper, House of Representatives Legislative Counsel's Office; re H. R. 12652
Q	Letter to Chairman Celler frm DCI Helms dtd 6 September 1972 re H. R. 12652
R	Ervin Bill Handout: Chronology & Status of the Bill One-Page Summary of Effect on CIA More Detailed Analysis Hampton Letter to Celler Legislation (H. R. 12652)

Approved For Release 2005/08/03 : CIA-RDP81-00818R000100050001-8

U.S. House of Representatives

SUBCOMMITTEE ON EMPLOYEE BENEFITS
OF THE
COMMITTEE ON POST OFFICE AND CIVIL SERVICE
207 CANNON HOUSE OFFICE BUILDING
Washington, D.C. 20515

April 1, 1971

Honorable Richard Helms
Director of Central Intelligence
Washington, D. C. 20505

Dear Mr. Helms:

On March 30, the Subcommittee on Employee Benefits voted to conduct hearings on the question of the invasion of privacy of Federal employees. Hearings will center around bills now pending before the subcommittee and which will be introduced in the near future. The bills currently pending are similar in many respects to Senator Ervin's bill which passed the Senate last year. The pertinent bills will be sent to you in the near future.

I would like to invite you to testify before the subcommittee on this most important matter. We tentatively plan to begin hearings within two or three weeks after the Easter recess. However, the hearing schedule is flexible depending on the availability of witnesses.

If you could have a member of your staff contact Mr. Richard Barton of the subcommittee staff on 180-6295 concerning a mutually agreeable date, I would be most appreciative. In view of the past history of this legislation, I am sure that the Central Intelligence Agency can contribute materially to our deliberations.

Sincerely yours,

Jim Hanley

JAMES M. HANLEY
Chairman

JMH:rab

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Calendar No. 536

92D CONGRESS
1st Session

SENATE

REPORT
No. 92-554

PROTECTING PRIVACY AND THE RIGHTS OF FEDERAL EMPLOYEES

DECEMBER 6 (legislative day, DECEMBER 4), 1971.—Ordered to be printed

Mr. ERVIN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1438]

The Subcommittee on Constitutional Rights to which was referred the bill S. 1438 to protect civilian employees of the executive branch of the U.S. Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy, having considered the same, reports favorably thereon without amendments and recommends that the bill do pass.

S. 1438 is identical to S. 782 as unanimously reported by the committee and unanimously approved by the Senate in the last Congress. The report on S. 782 is therefore reprinted below as approved by the committee.

PURPOSE

The purpose of the bill is to prohibit indiscriminate executive branch requirements that employees and, in certain instances, applicants for Government employment disclose their race, religion, or national origin; attend Government-sponsored meetings and lectures or participate in outside activities unrelated to their employment; report on their outside activities or undertakings unrelated to their work; submit to questioning about their religion, personal relationships or sexual attitudes through interviews, psychological tests, or polygraphs; support political candidates or attend political meetings. The bill would make it illegal to coerce an employee to buy bonds or make charitable contributions. It prohibits officials from requiring him to disclose his own personal assets, liabilities, or expenditures, or those of any member of his family unless, in the case of certain specified employees, such items would tend to show a conflict of interest. It would provide a right to have a counsel or other person present, if the employee wishes, at an interview which may lead to disciplinary pro-

ceedings. It would accord the right to a civil action in a Federal court for violation or threatened violation of the act, and it would establish a Board on Employees' Rights to receive and conduct hearings on complaints of violation of the act and to determine and administer remedies and penalties.

STATEMENT

The subcommittee has found a threefold need for this legislation. The first is the immediate need to establish a statutory basis for the preservation of certain rights and liberties of those who work for government now and those who will work for it in the future. The bill, therefore, not only remedies problems of today but looks to the future, in recognition of the almost certain enlargement of the scope of Federal activity and the continuing rise in the number of Americans employed by their Federal Government or serving it in some capacity.

Second, the bill meets the Federal Government's need to attract the best qualified employees and to retain them. As the former Chairman of the Civil Service Commission, Robert Ramspeck, testified:

> Today, the Federal Government affects the lives of every human being in the United States. Therefore, we need better people today, better qualified people, more dedicated people, in Federal service than we ever needed before. And we cannot get them if you are going to deal with them on the basis of suspicion, and delve into their private lives, because if there is anything the average American cherishes, it is his right of freedom of action, and his right to privacy. So I think this bill is hitting at an evil that has grown up, maybe not intended, but which is hurting the ability of the Federal Government to acquire the type of personnel that we must have in the career service.

Third is the growing need for the beneficial influence which such a statute would provide in view of the present impact of Federal policies, regulations and practices on those of State and local government and of private business and industry. An example of the interest demonstrated by governmental and private employers is the following comment by Allan J. Graham, secretary of the Civil Service Commission of the city of New York:

> It is my opinion, based on over 25 years of former Government service, including some years in a fairly high managerial capacity, that your bill, if enacted into law, will be a major step to stem the tide of "Big Brotherism," which constitutes a very real threat to our American way of life.
>
> In my present position as secretary of the Civil Service Commission of the city of New York, I have taken steps to propose the inclusion of several of the concepts of your bill into the rules and regulations of the city civil service commission.

Passage of the bill will signify congressional recognition of the threats to individual privacy posed by an advanced technology and by increasingly more complex organizations. Illustrating these trends is the greatly expanded use of computers and governmental and private development of vast systems for the efficient gathering of information and for data storage and retrieval. While Government enjoys the bene-

fit of these developments, there is at the same time an urgent need for defining the areas of individual liberty and privacy which should be exempt from the unwarranted intrusions facilitated by scientific techniques.

As Prof. Charles Reich of Yale Law School has stated, this bill "would be a significant step forward in defining the right of privacy today."

"One of the most important tasks which faces the Congress and State legislatures in the next decade is the protection of the citizen against invasion of privacy," states Prof. Stanley Anderson of the University of California, Santa Barbara. "No citizens," in his opinion, "are in more immediate danger of incursion into private affairs than Government employees. When enacted the bill will provide a bulwark of protection against such incursions."

The bill is based on several premises which the subcommittee investigation has proved valid for purposes of enacting this legislation. The first is that civil servants do not surrender the basic rights and liberties which are their due as citizens under the Constitution of the United States by their action in accepting Government employment. Chief among these constitutional protections is the first amendment, which protects the employee to privacy in his thoughts, beliefs and attitudes, to silence in his action and participation or his inaction and nonparticipation in community life and civic affairs. This principle is the essence of constitutional liberty in a free society.

The constitutional focus of the bill was emphasized by Senator Ervin in the following terms when he introduced S. 1035 on February 21, 1967:

> If this bill is to have any meaning for those it affects, or serve as a precedent for those who seek guidance in these matters, its purpose must be phrased in constitutional terms. Otherwise its goals will be lost.
>
> We must have as our point of reference the constitutional principles which guide every official act of our Federal Government. I believe that the Constitution, as it was drafted and as it has been implemented, embodies a view of the citizen as possessed of an inherent dignity and as enjoying certain basic liberties. Many current practices of Government affecting employees are unconstitutional; they violate not only the letter but the very spirit of the Constitution.
>
> I introduced this bill originally because I believe that, to the extent it has permitted or authorized unwarranted invasion of employee privacy and unreasonable restrictions on their liberty, the Federal Government has neglected its constitutional duty where its own employees are concerned, and it has failed in its role as the model employer for the Nation.
>
> Second, although it is a question of some dispute, I hold that Congress has a duty under the Constitution not only to consider the constitutionality of the laws it enacts, but to assure as far as possible that those in the executive branch responsible for administering the laws adhere to constitutional standards in their programs, policies, and administrative techniques.

The committee believes that it is time for Congress to forsake its reluctance to tell the executive branch how to treat its employees. When so many American citizens are subject to unfair treatment, to being unreasonably coerced or required without warrant to surrender their liberty, their privacy, or their freedom to act or not to act, to reveal or not to reveal information about themselves and their private thoughts and actions, then Congress has a duty to call a statutory halt to such practices. It has a duty to remind the executive branch that even though it might have to expend a little more time and effort to obtain some favored policy goal, the techniques and tools must be reasonable and fair.

Each section of the bill is based on evidence from many hundreds of cases and complaints showing that generally in the Federal service, as in any similar organizational situation, a request from a superior is equivalent to a command. This evidence refutes the argument that an employee's response to a superior's request for information or action is a voluntary response, and that an employee "consents" to an invasion of his privacy or the curtailment of his liberty. Where his employment opportunities are at stake, where there is present the economic coercion to submit to questionable practices which are contrary to our constitutional values, then the presence of consent or voluntarism may be open to serious doubt. For this reason the bill makes it illegal for officials to "request" as well as to "require" an employee to submit to certain inquiries or practices or to take certain actions.

Each section of the bill reflects a balancing of the interests involved: The interest of the Government in attracting the best qualified individuals to its service; and its interest in pursuing laudable goals such as protecting the national security, promoting equal employment opportunities, assuring mental health, or conducting successful bond-selling campaigns. There is, however, also the interest of the individual in protection of his rights and liberties as a private citizen. When he becomes an employee of his Government, he has a right to expect that the policies and practices applicable to him will reflect the best values of his society.

The balance of interests achieved assures him this right. While it places no absolute prohibition on Government inquiries, the bill does assure that restrictions on his rights and liberties as a Government employee are reasonable ones.

As Senator Bible stated:

> There is a line between what is Federal business and what is personal business, and Congress must draw that line. The right of privacy must be spelled out.

The weight of evidence, as Senator Fong has said: "points to the fact that the invasions of privacy under threats and coercion and economic intimidation are rampant in our Federal civil service system today. The degree of privacy in the lives of our civil servants is small enough as it is, and it is still shrinking with further advances in technical know-how. That these citizens are being forced by economic coercion to surrender this precious liberty in order to obtain and hold jobs is an invasion of privacy which should disturb every American. I, therefore, strongly believe that congressional action to protect our civil servants is long overdue."

The national president of the National Association of Internal Revenue Employees, Vincent Connery, told the subcommittee of this proposal in the 89th Congress:

> Senate bill 3779 is soundly conceived and perfectly timed. It appears on the legislative scene during a season of public employee unrest, and a period of rapidly accelerating demand among Federal employees for truly first-class citizenship. For the first time within my memory, at least, a proposed bill holds out the serious hope of attaining such a citizenship. S. 3779, therefore, amply deserves the fullest support of all employee organizations, both public and private, federation affiliated, and independent alike.

Similar statements endorsing the broad purpose of the bill were made by many others, including the following witnesses:

John F. Griner, national president, American Federation of Government Employees.

E. C. Hallbeck, national president, United Federation of Postal Clerks.

Jerome Keating, president, National Association of Letter Carriers.

Kenneth T. Lyons, national president, National Association of Government Employees.

John A. McCart, operations director, Government Employees Council of AFL–CIO.

Hon. Robert Ramspeck, former Chairman, Civil Service Commission.

Vincent Jay, executive vice president, Federal Professional Association.

Francis J. Speh, president, 14th District Department, American Federation of Government Employees.

Lawrence Speiser, director, Washington office, American Civil Liberties Union.

Nathan Wolkomir, national president, National Federation of Federal Employees.

LEGISLATIVE HISTORY

Following is a chronological account of Committee action on this legislation to date.

S. 1438 was preceded by S. 782 of the 91st Congress, by S. 1035 of the 90th Congress, and by S. 3079 and S. 3703 of the 89th Congress.

Violations of rights covered by the bill as well as other areas of employee rights have been the subject of intensive hearings and investigation by the subcommittee for the last five Congresses.

In addition to investigation of individual cases, the Subcommittee on Constitutional Rights has conducted annual surveys of agency policies on numerous aspects of Government personnel practices. In 1965, pursuant to Senate Resolution 43, hearings were conducted on due process and improper use of information acquired through psychological testing, psychiatric examinations, and security and personnel interviews.

In a letter to the Chief Executive on August 3, 1966, the subcommittee chairman stated:

> For some time, the Constitutional Rights Subcommittee has received disturbing reports from responsible sources concerning violations of the rights of Federal employees. I have attempted to direct the attention of appropriate officials to these matters, and although replies have been uniformly courteous, the subcommittee has received no satisfaction whatsoever, or even any indication of awareness that any problem exists. The invasions of privacy have reached such alarming proportions and are assuming such varied forms that the matter demands your immediate and personal attention.
>
> The misuse of privacy-invading personality tests for personnel purposes has already been the subject of hearings by the subcommittee. Other matters, such as improper and insulting questioning during background investigations and due process guarantees in denial of security clearances have also been the subject of study. Other employee complaints, fast becoming too numerous to catalog, concern such diverse matters as psychiatric interviews; lie detectors; race questionnaires; restrictions on communicating with Congress; pressure to support political parties yet restrictions on political activities; coercion to buy savings bonds; extensive limitations on outside activities yet administrative influence to participate in agency-approved functions; rules for writing, speaking and even thinking; and requirements to disclose personal information concerning finances, property and creditors of employees and members of their families.

After describing in detail the operation of two current programs to illustrate the problems, Senator Ervin commented:

> Many of the practices now in extensive use have little or nothing to do with an individual's ability or his qualification to perform a job. The Civil Service Commission has established rules and examinations to determine the qualifications of applicants. Apparently, the Civil Service Commission and the agencies are failing in their assignment to operate a merit system for our Federal civil service.
>
> It would seem in the interest of the administration to make an immediate review of these practices and questionnaires to determine whether the scope of the programs is not exceeding your original intent and whether the violations of employee rights are not more harmful to your long-range goals than the personnel shortcuts involved.

* * * * * * *

Following this letter and others addressed to the Chairman of the Civil Service Commission and the Secretaries of other departments, legislation to protect employee rights was introduced in the Senate. This proposal, S. 3703 was introduced by the chairman on August 9, 1966, and referred to the Judiciary Committee. On August 25, 1966, the chairman received unanimous consent to a request to add the names of 33 cosponsors to the bill. On August 26, 1966, he introduced a bill similar to S. 3703, containing an amendment reducing the criminal penalties provided in section 2. This bill, S. 3779, was also referred to

the Judiciary Committee, and both S. 3703 and S. 3779 were then referred to the Subcommittee on Constitutional Rights.

Comments on the bill and on problems related to it were made by the chairman in the Senate on July 18, August 9, August 25, August 26, September 29, October 17 and 18, 1966, and on February 21, 1967.[1]

Hearings on S. 3779 were conducted before the subcommittee on September 23, 29, 30, and October 3, 4, and 5, 1966. Reporting to the Senate on these hearings, the subcommittee chairman made the following statement:

> The recent hearings on S. 3779 showed that every major employee organization and union, thousands of individual employees who have written Congress, law professors, the American Civil Liberties Union, and a number of bar associations agree on the need for statutory protections such as those in this measure.
>
> We often find that as the saying goes "things are never as bad as we think they are," but in this case, the hearings show that privacy invasions are worse that we thought they were. Case after case of intimidation, of threats of loss of job or security clearance were brought to our attention in connection with bond sales, and Government charity drives.
>
> Case after case was cited of privacy invasion and denial of due process in connection with the new financial disclosure requirements. A typical case is the attorney threatened with disciplinary action or loss of his job because he is both unable and unwilling to list all gifts, including Christmas presents from his family, which he had received in the past year. He felt this had nothing to do with his job. There was the supervisory engineer who was told by the personnel officer that he would have to take disciplinary action against the 25 professional employees in his division who resented being forced to disclose the creditors and financial interests of themselves and members of their families. Yet there are no procedures for appealing the decisions of supervisors and personnel officers who are acting under the Commission's directive. These are not isolated instances; rather, they represent a pattern of privacy invasion reported from almost every State.
>
> The subcommittee was told that supervisors are ordered to supply names of employees who attend PTA meetings and engage in Great Books discussions. Under one department's regulations, employees are requested to participate in specific communitiy activities promoting local and Federal antipoverty, beautification, and equal employment programs; they are told to lobby in local city councils for fair housing ordinances, to go out and make speeches on any number of subjects, to supply flower and grass seed for beautification projects, and to paint other people's houses. When those regulations were brought to the subcommittee's attention several weeks ago, we were told that they were in draft form. Yet, we then discovered they had already been implemented and employees whose official duties had nothing to do with such programs were being informed that failure to participate

[1] See also, *Cong. Rec.* Comments.

would indicate an uncooperative attitude and would be reflected in their efficiency records.

The subcommittee hearings have produced ample evidence of the outright intimidation, arm twisting and more subtle forms of coercion which result when a superior is requested to obtain employee participation in a program. We have seen this in the operation of the bond sale campaign, the drives for charitable contributions, and the use of self-identification minority status questionnaires. We have seen it in the sanctioning of polygraphs, personality tests, and improper questioning of applicants for employment.

In view of some of the current practices reported by employee organizations and unions, it seems those who endorse these techniques for mind probing and thought control of employees have sworn hostility against the idea that every man has a right to be free of every form of tyranny over his mind; they forget that to be free a man must have the right to think foolish thoughts as well as wise ones. They forget that the first amendment implies the right to remain silent as well as the right to speak freely—the right to do nothing as well as the right to help implement lofty ideals.

It is not under this administration alone that there has been a failure to respect employee rights in a zeal to obtain certain goals. While some of the problems are new, others have been prevalent for many years with little or no administrative action taken to attempt to ameliorate them. Despite congressional concern, administrative officials have failed to discern patterns of practice in denial of rights. They seem to think that if they can belatedly remedy one case which is brought to the attention of the Congress, the public and the press, that this is enough—that the "heat" will subside. With glittering generalities, qualified until they mean nothing in substance, they have sought to throw Congress off the track in its pursuit of permanent corrective action. We have seen this in the case of personality testing, in the use of polygraphs, and all the practices which the bill would prohibit.

The Chairman of the Civil Service Commission informed the subcommittee that there is no need for a law to protect employee rights. He believes the answer is—

> to permit executive branch management and executive branch employes as individuals and through their unions, to work together to resolve these issues as part of their normal discourse.

It is quite clear from the fearful tenor of the letters and telephone calls received by the subcommittee and Members of Congress that there is no discourse and is not likely to be any discourse on these matters between the Commission and employees. Furthermore, there are many who do not even fall within the Commission's jurisdiction. For them, there is no appeal but to Congress.

As for the argument that the discourse between the unions and the Commission will remedy the wrongs, the testimony of the union representatives adequately demolishes that dream.

The typical attitude of those responsible for personnel management is reflected in Mr. Macy's answer that there may be instances where policy is not adhered to, but "There is always someone who doesn't get the word." Corrective administration action, he says, is fully adequate to protect employee rights.

Administrative action is not sufficient. Furthermore, in the majority of complaints, the wrong actually stems from the stated policy of the agency or the Commission. How can these people be expected to judge objectively the reasonableness and constitutionality of their own policies? This is the role of Congress, and in my opinion, Congress has waited too long as it is to provide the guidance that is desperately needed in these matters.

S. 1035, 90th Congress

On the basis of the subcommittee hearings, agency reports, and the suggestions of many experts, the bill was amended to meet legitimate objections to the scope and language raised by administrative witnesses and to clarify the intent of its cosponsors that it does not apply to the proper exercise of management authority and supervisory discretion, or to matters now governed by statute.

This amended version of S. 3779 was introduced in the Senate by the chairman on February 21, 1967, as S. 1035 with 54 cosponsors. It was considered by the Constitutional Rights Subcommittee and unanimously reported with amendments by the Judiciary Committee on August 21, 1967. [S. Rept. No. 534, 90th Cong. 1st Sess.] The proposal was considered by the Senate on September 13, 1967, and approved, with floor amendments, by a 79 to 4 vote. After absentee approvals were recorded, the record showed a total of 90 Members supported passage of the bill. The amendments adopted on the Senate floor deleted a complete exemption which the committee bill provided for the Federal Bureau of Investigation; instead, it was provided that the Federal Bureau of Investigation should be accorded the same limited exemptions provided for the Central Intelligence Agency and the National Security Agency. A provision was added to allow the three Directors to delegate the power to make certain personal findings required by section 6 of the bill.

Committee amendments to S. 1035, 90th Congress

1. Amendment to section 1(a) page 2, line 13:

> *Provided further*, That nothing contained in this subsection shall be construed to prohibit inquiry concerning the national origin of any such employee when such inquiry is deemed necessary or advisable to determine suitability for assignment to activities or undertakings related to the national security wthin the United States or to activities or undertakings of any nature outside the United States.

2. Amendment to section 1(b), page 2, line 25 strike "to" (technical amendment.)

3. Delete section 1(e), page 4, lines 1–4 (prohibitions on patronizing business establishments) and renumber following sections as sections 1(e), (f), (g), (h), (i), (j), (k), and (l), respectively.

4. Delete section 4, page 10, lines 12–23 (criminal penalties), and renumber following sections as sections 4 and 5, respectively.

5. Amendment to section 1(f), page 4, line 25:

Provided further, however, That nothing contained in this subsection shall be construed to prohibit an officer of the department or agency from advising any civilian employee or applicant of a specific charge of sexual misconduct made against that person, and affording him an opportunity to refute the charge.

6. Amendments to section 1(f), page 4, at lines 17 and 19, change "psychiatrist" to "physician".

7. Amendment to section 1(k), page 7, at line 10, change (j) to (i).

8. Amendment to section 2(b), page 9, at line 6 and line 9, change "psychiatrist" to "physician".

9. Amendment to section 2(b), page 9, at line 15:

Provided further, however, That nothing contained in this subsection shall be construed to prohibit an officer of the Civil Service Commission from advising any civilian employee or applicant of a specific charge of sexual misconduct made against that person, and affording him an opportunity to refute the charge.

10. Amendment to section 5, page 11, line 21, insert after the word "violation." the following:

The Attorney General shall defend all officers or persons sued under this section who acted pursuant to an order, regulation, or directive, or who, in his opinion, did not willfully violate the provisions of this Act.

11. Amendment to section 6(l), page 16, at line 24, strike "sign charges and specifications under section 830 (art. 30)" and insert in lieu thereof "convene general courts-martial under section 822 (art. 22)" (technical amendment).

12. Amendment to section 6(m), page 17, line 14, change subsection (j) to (k) (technical amendment).

13. Amendment, page 18, add new section 6:

SEC. 6. Nothing contained in this Act shall be construed to prohibit an officer of the Central Intelligence Agency or of the National Security Agency from requesting any civilian employee or applicant to take a polygraph test, or to take a psychological test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters, or to provide a personal financial statement, if the Director of the Central Intelligence Agency or the Director of the National Security Agency makes a personal finding with regard to each individual to be so tested or examined that such test or information is required to protect the national security.

14. Amendment, page 18, add new section 8, and renumber following section as section 9:

SEC. 8. Nothing contained in sections 4 and 5 shall be construed to prevent establishment of department and agency

grievance procedures to enforce this Act, but the existence of such procedures shall not preclude any applicant or employee from pursuing the remedies established by this Act or any other remedies provided by law: *Provided, however*, That if under the procedures established, the employee or applicant has obtained complete protection against threatened violations or complete redress for violations, such action may be pleaded in bar in the United States District Court or in proceedings before the Board on Employee Rights: *Provided further, however*, That if an employee elects to seek a remedy under either section 4 or section 5, he waives his right to proceed by an independent action under the remaining section.

Comparison of S. 1035, 90th Congress, as introduced, and S. 3779, 89th Congress

As introduced, the revised bill, S. 1035, differed from S. 3779 of the 89th Congress in the following respects:

1. The section banning requirements to disclose race, religion, or national origin was amended to permit inquiry on citizenship where it is a statutory condition of employment.

2. The provision against coercion of employees to buy bonds or make charitable donations was amended to make it clear that it does not prohibit calling meetings or taking any action appropriate to afford the employee the opportunity voluntarily to invest or donate.

3. A new section providing for administrative remedies and penalties establishes a Board on Employee Rights to receive and conduct hearings on complaints of violation of the act, and to determine and administer remedies and penalties. There is judicial review of the decision under the Administrative Procedure Act.

4. A specific exemption for the Federal Bureau of Investigation is included.

5. Exceptions to the prohibitions on privacy-invading questions by examination, interrogations, and psychological tests are provided upon psychiatric determination that the information is necessary in the diagnosis and treatment of mental illness in individual cases, and provided that it is not elicited pursuant to general practice or regulation governing the examination of employees or applicants on the basis of grade, job, or agency.

6. The section prohibiting requirements to disclose personal financial information contains technical amendments to assure that only persons with final authority in certain areas may be subject to disclosure requirements.

7. For those employees excluded from the ban on disclosure requirements, a new section (j), provides that they may only be required to disclose items tending to show a conflict of interest.

8. Military supervisors of civilian employees are included within the prohibitions of the bill, and violation of the act is made a punishable offense under the Uniform Code of Military Justice.

9. A new section 2 has been added to assure that the same prohibitions in section 1 on actions of department and agency officials with respect to employees in their departments and agencies apply alike to officers of the Civil Service Commission with respect to the employees and applicants with whom they deal.

10. Section (b) of S. 3779, relating to the calling or holding of meetings or lectures to indoctrinate employees, was deleted.

11. Sections (c), (d), and (e) of S. 3779—sections (b), (c), and (d) of S. 1035—containing prohibitions on requiring attendance at outside meetings, reports on personal activities and participation in outside activities, were amended to make it clear that they do not apply to the performance of official duties or to the development of skill, knowledge, and abilities which qualify the person for his duties or to participation in professional groups or associations.

12. The criminal penalties were reduced from a maximum of $500 and 6 months' imprisonment to $300 and 30 days.

13. Section (h) of S. 3779 prohibiting requirements to support candidates, programs, or policies of any political party was revised to prohibit requirements to support the nomination or election of persons or to attend meetings to promote or support activities or undertakings of any political party.

14. Other amendments of a technical nature.

S. 782, 91st Congress—Committee amendments

S. 782, as introduced by Senator Ervin with 54 cosponsors, was identical to S. 1035 of the 90th Congress as passed by the Senate. As amended in Committee, it was reported to the Senate on May 15, 1970, and passed by unanimous consent on May 19.

The Subcommittee met in executive session on July 22, 1969, to receive testimony from Richard Helms, Director of the Central Intelligence Agency and other agency representatives. On the basis of this testimony and after a number of meetings of subcommittee members with officials of the Central Intelligence Agency, the National Security Agency, and the Federal Bureau of Investigation, the language contained in the committee amendments was drafted and meets with the approval of the Directors of those agencies.

Amendments

1. Amendment to section 1(a), page 2, line 15 insert after the word "origin" the words "or citizenship" and after the word "employee", the words "or person, or of his forebears".

2. Amendment to section 1(k), page 8, line 5 after the word "requests", strike the period and insert the following:

> : *Provided, however*, That a civilian employee of the United States serving in the Central Intelligence Agency, or the National Security Agency may be accompanied only by a person of his choice who serves in the agency in which the employee serves or by counsel who has been approved by the agency for access to the information involved.

3. Amendment to section 6, page 18, lines 15 and 16 delete "or of the Federal Bureau of Investigation".

4. Amendment to section 6, page 18, line 25, and page 19, line 1 delete "or the Director of the Federal Bureau of Investigation or his designee".

5. On page 19, add a new section 7 as follows:

> SEC. 7. No civilian employee of the United States serving in the Central Intelligence Agency or the National Security Agency, and no individual or organization acting on behalf of

such employee, shall be permitted to invoke the provisions of sections 4 and 5 without first submitting a written complaint to the agency concerned about the threatened or actual violation of this Act and affording such agency 120 days from the date of such complaint to prevent the threatened violation or to redress the actual violation: *Provided, however* That nothing in this Act shall be construed to affect any existing authority of the Director of Central Intelligence under 50 U.S.C. 403(c), and any authorities available to the National Security Agency under 50 U.S.C. 833 to terminate the employment of any employee."

6. On page 19, add a new section 8 as follows:

SEC. 8. Nothing in this act shall be construed to affect in any way the authority of the Directors of the Central Intelligence Agency or the National Security Agency to protect or withhold information pursuant to statute or executive order. The personal certification by the Director of the agency that disclosure of any information is inconsistent with the provision of any statute or executive order shall be conclusive and no such information shall be admissable in evidence in any interrogation under section 1(k) or in any civil action under section 4 or in any proceeding or civil action under section 5.

7. On page 19, add a new section 9 as follows:

SEC. 9. This act shall not be applicable to the Federal Bureau of Investigation.

8. On page 19, at line 5, renumber "SEC. 7" as "SEC. 10" and at line 20, renumber "SEC. 8" as "SEC. 11".

QUESTIONS ON RACE, RELIGION, AND NATIONAL ORIGIN

Many complaints received by the subcommittee concerned official requests or requirements that employees disclose their race, religion, or ethnic or national origin. This information has been obtained from employees through the systematic use of questionnaires or oral inquiries by supervisors.

Chief concern has focused on a policy inaugurated by the Civil Service Commission in 1966, under which present employees and future employees would be asked to indicate on a questionnaire whether they were "American Indian," "oriental," "Negro," "Spanish-American" or "none of these." Approximately 1.7 million employees were told to complete the forms, while some agencies including some in the Department of Defense continued their former practice of acquiring such information through the "head count" method. Although the Civil Service Commission directive stated that disclosure of such information was voluntary, complaints show that employees and supervisors generally felt it to be mandatory. Administrative efforts to obtain compliance included in some instances harassment, threats, and intimidation. Complaints in different agencies showed that employees who did not comply received airmail letters at their homes with new forms; or their names were placed on administrative lists for "follow-

up" procedures, and supervisors were advised to obtain the information from delinquent employees by a certain date.

In the view of John McCart, representing the Government Employes' Council, AFL–CIO:

> When the Civil Service Commission and the regulations note that participation by the employee will be voluntary, this removes some of the onus of the encroachment on an individual's privacy. But in an organizational operation of the size and complexity of the Federal Government, it is just impossible to guarantee that each individual's right to privacy and confidentiality will be observed.
>
> In addition to that, there have been a large number of complaints from all kinds of Federal employees. In the interest of maintaining the rights of individual workers against the possibility of invading those rights, it would seem to us it would be better to abandon the present approach, because there are other alternatives available for determining whether that program is being carried out.

The hearing record contains numerous examples of disruption of employee-management relations, and of employee dissatisfaction with such official inquiries. Many told the subcommittee that they refused to complete the questionnaires because the matter was none of the Government's business; others, because of their mixed parentage, felt unable to state the information.

Since 1963, the policy of the American Civil Liberties Union on the method of collecting information about race has favored the head count wherever possible. Although the policy is presently under review, the subcommittee finds merit in the statement that:

> The collection and dissemination of information about race creates a conflict among several equally important civil liberties: the right of free speech and free inquiry, on the one hand, and the rights of privacy and of equality of treatment and of opportunity, on the other. The ACLU approves them all. But at this time in human history, when the principle of equality and nondiscrimination must be vigorously defended, it is necessary that the union oppose collection and dissemination of information regarding race, except only where rigorous justification is shown for such action. Where such collection and dissemination is shown to be justified, the gathering of information should be kept to the most limited form, wherever possible by use of the head count method, and the confidential nature of original records should be protected as far as possible.

Former Civil Service Commission Chairman Robert Ramspeck told the subcommittee:

> To consider race, color, religion, and national origin in making appointments, in promotions and retention of Federal employees is, in my opinion, contrary to the merit system. There should be no discrimination for or against minority persons in Federal Government employment.

As the hearings and complaints have demonstrated, the most telling argument against the use of such a questionnaire, other than the constitutional issue, is the fact that it does not work. This is shown by the admission by many employees that they either did not complete the forms or that they gave inaccurate data.

Mr. Macy informed the subcommittee:

> In the State of Hawaii the entire program was cut out because it had not been done there before, and it was inadvertently included in this one, and the feeling was that because of the racial composition there it would be exceedingly difficult to come up with any kind of identification along the lines of the card that we were distributing.

The Civil Service Commission on May 9 informed the subcommittee that it had "recently approved regulations which will end the use of voluntary self-identification of race as a means of obtaining minority group statistics for the Federal work force." The Commission indicated its decision was based on the failure of the program to produce meaningful statistics. In its place the Commission will rely on supervisory reports based solely on observation, which would not be prohibited by the bill.

As Senator Fong stated:

> It should be noted that the bill would not bar head counts of employee racial extraction for statistical purposes by supervisors. However, the Congress has authorized the merit system for the Federal service and the race, national origin or religion of the individual or his forebears should have nothing to do with his ability or qualifications to do a job.

Section 1(a) of the bill was included to assure that employees will not again be subjected to such unwarranted invasion of their privacy. It is designed to protect the merit system which Congress has authorized for the Federal service. Its passage will reaffirm the intent of Congress that a person's religion, race, and national or ethnic origin or that of his forebears have nothing to do with his ability or qualification to perform the requisite duties of a Federal position, or to qualify for a promotion.

By eliminating official authority to place the employee in a position in which he feels compelled to disclose this personal data, the bill will help to eliminate the basis for such complaints of invasion of privacy and discrimination as Congress has received for a number of years. It will protect Americans from the dilemma of the grandson of an American Indian who told the subcommittee that he had exercised his option and did not complete the minority status questionnaire. He did not know how to fill it out. Shortly thereafter he received a personal memorandum from his supervisor "requesting" him to complete a new questionnaire and "return it immediately." He wrote: "I personally feel that if I do not comply with this request (order), my job or any promotion which comes up could be in jeopardy."

The prohibitions in section 1(a) against official inquiries about religion, and in section 1(c) concerning religious beliefs and practices together constitute a bulwark to protect the individual's right to silence

concerning his religious convictions and to refrain from an indication of his religious beliefs.

Referring to these two sections, Lawrence Speiser, director of the Washington office of the American Civil Liberties Union testified:

> These provisions would help, we hope, eliminate a constantly recurring problem involving those new Government employees who prefer to affirm their allegiance rather than swearing to it. All Government employees must sign an appointment affidavit and take an oath or affirmation of office.
>
> A problem arises not just when new employees enter Government employment but in all situations where the Government requires an oath, and there is an attempt made on the part of those who prefer to affirm. It is amazing the intransigence that arises on the part of clerks or those who require the filling out of these forms, or the giving of the statement in permitting individuals to affirm.
>
> The excuses that are made vary tremendously, either that the form can only be signed and they cannot accept a form in which "so help me God" is struck out, because that is an amendment, and they are bound by their instructions which do not permit any changes to be made on the forms at all.
>
> Also, in connection with the giving of oaths, I have had one case in which an investigator asked a young man this question: "For the purposes of administering the oath, do you believe in God?"
>
> It is to be hoped that the provisions of this bill would bar practices of that kind. The law should be clear at this time. Title I, United States Code, section 1 has a number of rules of consruction, one of which says that wherever the word "oath" appears, that includes "affirmation," and wherever the word "swear" appears, that includes "affirm."
>
> This issue comes up sometimes when clerks will ask, "Why do you want to affirm? Do you belong to a religious group that requires an affirmation rather than taking an oath?" And unless the individual gives the right answer, the clerks won't let him affirm. It is clear under the *Torcaso* case that religious beliefs and lack of religious beliefs are equally entitled to the protection of the first amendment.

The objection has been raised that the prohibition against inquiries into race, religion, or national origin would hinder investigation of discrimination complaints. In effect, however, it is expected to aid rather than hinder in this area of the law, by decreasing the opportunities for discrimination initially. It does not hinder acquisition of the information elsewhere; nor does it prevent a person from volunteering the information if he wishes to supply it in filing a complaint or in the course of an investigation.

CONTROL OF EMPLOYEE OPINIONS, OUTSIDE ACTIVITIES

Reports have come to the subcommittee of infringements and threatened infringements on first amendment freedoms of employees: freedom to think for themselves free of Government indoctrination; freedom to choose their outside civic, social, and political activities

as citizens free of official guidance; or even freedom to refuse to participate at all without reporting to supervisors.

Illustrative of the climate of surveillance the subcommittee has found was a 13-year-old Navy Department directive, reportedly similar to those in other agencies, warning employees to guard against "indirect remarks" and to seek "wise and mature" counsel within their agencies before joining civic or political associations.

In the view of the United Federation of Postal Clerks:

> Perhaps no other right is so essential to employee morale as the right to personal freedom and the absence of interference by the Government in the private lives and activities of its employees. Attempts to place prohibitions on the private associations of employees; mandatory reporting of social contacts with Members of Congress and the press; attempts to "orient" or "indoctrinate" Federal employees on subjects outside their immediate areas of professional interest; attempts to "encourage" participation in outside activities or discourage patronage of selected business establishments and coercive campaigns for charitable donations are among the most noteworthy abuses of Federal employees' right to personal freedom.

An example of improper on-the-job indoctrination of employees about sociological and political matters was cited in his testimony by John Griner, president of the AFL-CIO affiliated American Federation of Government Employees:

> One instance of disregard of individual rights of employees as well as responsibility to the taxpayers, which has come to my attention, seems to illustrate the objectives of subsections (b), (c), and (d), of section 1 of the Ervin bill. It happened at a large field installation under the Department of Defense.
>
> The office chief called meetings of different groups of employees throughout the day * * *. A recording was played while employees listened about 30 minutes. It was supposedly a speech made at a university, which went deeply into the importance of integration of the races in this country. There was discussion of the United Nations—what a great thing it was—and how there never could be another world war. The person who reported this incident made this comment: "Think of the taxpayers' money used that day to hear that record." I think that speaks for itself.

Other witnesses were in agreement with Mr. Griner's view on the need for protecting employees now and in the future from any form of indoctrination on issues unrelated to their work. The issue was defined at hearings on S. 3779 in the following colloquy between the subcommittee chairman and Mr. Griner.

> If they are permitted to hold sessions such as this on Government time and at Government expense, they might then also hold sessions as to whether or not we should be involved in the Vietnam war or whether we should not be, whether we should pull out or whether we should stay, and I think it could go to any extreme under those conditions.

Of course, we are concerned with it, yes. But that is not a matter for the daily routine of work.

Senator ERVIN. Can you think of anything which has more direful implications for a free America than a practice by which a government would attempt to indoctrinate any man with respect to a particular view on any subject other than the proper performance of his work?

Mr. GRINER. I think if we attempted to do that we would be violating the individual's constitutional rights.

Senator ERVIN. Is there any reason whatever why a Federal civil service employee should not have the same right to have his freedom of thought on all things under the sun outside of the restricted sphere of the proper performance of his work that any other American enjoys?

Mr. GRINER. No, sir.

With one complaint of attempted indoctrination of employees at a Federal installation, a civil servant enclosed a memorandum taken from a bulletin board stating the time, place, and date of a lecture by a sociology professor on the subject of the importance of racial integration. Attendance was to be voluntary but the notice stated that a record would be made of those attending or not attending.

Concerning such a practice, one witness commented: "If I had been a Federal employee and I cared anything about my job, I would have been at that lecture."

Employees of an installation in Pennsylvania complained of requirements to attend film lectures on issues of the cold war.

Witnesses agreed that taking notice of attendance at such meetings constituted a form of coercion to attend. Section 1(b) will eliminate such intimidation. It leaves unaffected existing authority to use any appropriate means, including publicity, to provide employees information about meetings concerning matters such as charity drives and bond-selling campaigns.

Section (c) protests a basic constitutional right of the individual employee to be free of official pressure on him to engage in any civic or political activity or undertaking which might involve him as a private citizen, but which has no relation to his Federal employment. It preserves his freedom of thought and expression, including his right to keep silent, or to remain inactive.

This section will place a statutory bar against the recurrence of employee complaints such as the following received by a Member of the Senate:

Dear Senator ———: On ———, 1966, a group of Treasury Department administrators were called to Miami for a conference led by ———, Treasury Personel Officer, with regard to new revisions in chapter 713 of the Treasury Personnel Manual.

Over the years the Treasury Department has placed special emphasis on the hiring of Negroes under the equal employment opportunity program, and considerable progress in that regard has been made. However, the emphasis of the present conference was that our efforts in the field of equal employment opportunity have not been sufficient.

Under the leadership of President Johnson and based on his strong statement with regard to the need for direct action to cure the basic causes leading to discrimination, the Treasury Department has now issued specific instructions requiring all supervisors and line managers to become actively and aggressively involved in the total civil rights problem.

The requirements laid down by chapter 713 and its appendix include participation in such groups as the Urban League, NAACP, et cetera (these are named specifically) and involvement in the total community action program, including open housing, integration of schools, et cetera.

The policies laid down in this regulation, as verbally explained by the Treasury representatives at the conference, go far beyond any concept of employee personnel responsibility previously expressed. In essence, this regulation requires every Treasury manager or supervisor to become a social worker, both during his official hours and on his own time. This was only tangentially referred to in the regulation and its appendages, but was brought out forcefully in verbal statements by Mr. ——— and ———. Frankly, this is tremendously disturbing to me and to many of the other persons with whom I have discussed the matter. We do not deny the need for strong action in the field of civil rights, but we do sincerely question the authority of our Government to lay out requirements to be met on our own time which are repugnant to our personal beliefs and desires.

The question was asked as to what disciplinary measures would be taken against individuals declining to participate in these community action programs. The reply was given by the equal employment officer, that such refusal would constitute an undesirable work attitude bordering on insubordination and should at the very least be reflected on the annual efficiency rating of the employee.

The principles expressed in these regulations and in this conference strike me as being of highly dangerous potential. If we, who have no connection with welfare or social programs, can be required to take time from our full-time responsibilities in our particular agencies and from the hours normally reserved for our own refreshment and recreation to work toward integration of white neighborhoods, integration of schools by artificial means, and to train Negroes who have not availed themselves of the public schooling available, then it would seem quite possible that under other leadership, we could be required to perform other actions which would actually be detrimental to the interests of our Nation.

* * * * *

Testifying on the issue of reporting outside activities, the American Civil Liberties Union representative commented:

To the extent that individuals are apprehensive they are going to have to, at some future time, tell the Government about what organizations they have belonged to or been associated with, that is going to inhibit them in their willingness

to explore all kinds of ideas, their willingness to hear speakers, their willingness to do all kinds of things. That has almost as deadening an effect on free speech in a democracy as if the opportunities were actually cut off.

The feeling of inhibition which these kinds of questions cause is as dangerous, it seems to me, as if the Government were making actual edicts.

Witnesses gave other examples of invasion of employees' private lives which would be halted by passage of the bill.

In the southwest a division chief dispatched a buck slip to his group supervisors demanding: "the names * * * of employees * * * who are participating in any activities including such things as: PTA in integrated schools, sports activities which are inter-social, and such things as Great Books discussion groups which have integrated memberships."

* * * * * * *

In a Washington office of the Department of Defense, a branch chief by telephone asked supervisors to obtain from employees the names of any organizations they belonged to. The purpose apparently was to obtain invitations for Federal Government officials to speak before such organizations.

* * * * * * *

Reports have come to the subcommittee that the Federal Maritime Commission, pursuant to civil service regulations, requested employees to participate in community activities to improve the employability of minority groups, and to report to the chairman any outside activities.

* * * * * * *

In addition to such directives, many other instances involving this type of restriction have come to the attention of the subcommittee over a period of years. For example, some agencies have either prohibited flatly, or required employees to report, all contacts, social or otherwise, with Members of Congress or congressional staff members. In many cases reported to the subcommittee, officials have taken reprisals against employees who communicated with their Congressmen and have issued directives threatening such action.

* * * * * * *

The Civil Service Commission on its Form 85 for nonsensitive positions requires an individual to list: "Organizations with which affilated (past and present) other than religious or political organizations or those with religious or political affiliations (if none, so state)."

* * * * * * *

PRIVACY INVASIONS IN INTERVIEWS, INTERROGATIONS, AND PERSONALITY TESTS

Although it does not outlaw all of the unwarranted personal prying to which employees and applicants are now subjected, section 1(e) of the reported bill will prohibit the more serious invasions of personal privacy reported. The subcommittee believes it will also result in limitations beyond its specific prohibitions by encouraging administrative adherence to the principles it reflects.

It will halt mass programs in which, as a general rule, agency officials conduct interviews during which they require or request applicants or employees to reveal intimate details about their habits, thoughts, and attitudes on matters unrelated to their qualifications and ability to perform a job.

It will also halt individual interrogations such as that involving an 18-year-old college sophomore applying for a summer job as a secretary at a Federal department.

In the course of an interview with a department investigator, she was asked wide-ranging personal questions. For instance, regarding a boy whom she was dating, she was asked questions which denoted assumptions made by the investigator, such as:

> Did he abuse you?
>
> Did he do anything unnatural with you? You didn't get pregnant, did you?
>
> There's kissing, petting, and intercourse, and after that, did he force you to do anything to him, or did he do anything to you?

The parent of this student wrote:

> This interview greatly transcended the bounds of normal areas and many probing personal questions were propounded. Most questions were leading and either a negative or positive answer resulted in an appearance of self-incrimination. During this experience, my husband was on an unaccompanied tour of duty in Korea and I attempted alone, without success, to do battle with the Department.
>
> I called and was denied any opportunity to review what had been recorded in my daughter's file. Likewise my daughter was denied any review of the file in order to verify or refute any of the record made by the State Department interviewer. This entire matter was handled as if applicants for State Department employment must subject themselves to the personal and intimate questions and abdicate all claims to personal rights and privileges.
>
> As a result of this improper intrusion into my daughter's privacy which caused all great mental anguish, I had her application for employment withdrawn from the State Department. This loss of income made her college education that much more difficult.
>
> Upon my husband's return, we discussed this entire situation and felt rather than subjecting her again to the sanctioned methods of Government investigation we would have her work for private industry. This she did in the summer of 1966, with great success and without embarrassing or humiliating Gestapo-type investigation.

Upon subcommittee investigation of this case, the Department indicated that this was not a unique case, because it used a "uniform policy in handling the applications of summer employees as followed with all other applicant categories." It stated that its procedure under Executive Order 10450 is a basic one "used by the Department and other executive agencies concerning he processing of any category of applicants who will be dealing with sensitive, classified material." Its only other comment on the case was to assure that "any information

developed during the course of any of our investigations that is of a medical nature, is referred to our Medical Division for proper evaluation and judgment." In response to a request for copies of departmental guidelines governing such investigations and interviews, the subcommittee was told they were classified.

Section 1(e) would protect every employee and every civilian who offers his services to his Government from indiscriminate and unauthorized requests to submit to any test designed to elicit such information as the following:

My sex life is satisfactory,
I have never been in trouble because of my sex behavior.
Everything is turning out just like the prophets of the Bible said it would.
I loved my father.
I am very strongly attracted by members of my own sex.
I go to church almost every week.
I believe in the second coming of Christ.
I believe in a life hereafter.
I have never indulged in any unusual sex practices.
I am worried about sex matters.
I am very religious (more than most people).
I loved my mother.
I believe there is a Devil and a Hell in afterlife.
I believe there is a God.
Once in a while I feel hate toward members of my family whom I usually love.
I wish I were not bothered by thoughts about sex.

The subcommittee hearings in 1965 on "Psychological tests and constitutional rights" and its subsequent investigations support the need for such statutory prohibitions on the use of tests.

In another case, the subcommittee was told, a woman was questioned for 6 hours "about every aspect of her sex life—real, imagined, and gossiped—with an intensity that could only have been the product of inordinately salacious minds."

The specific limitation on the three areas of questioning proscribed in S. 1035 in no way is intended as a grant of authority to continue or initiate the official eliciting of personal data from individuals on subjects not directly proscribed. It would prohibit investigators, or personnel, security and medical specialists from indiscriminately requiring or requesting the individual to supply, orally or through tests, data on religion, family, or sex. It does not prevent a physician from doing so if he has reason to believe the employee is "suffering from mental illness" and believes the information is necessary to make a diagnosis. Such a standard is stricter than the board "fitness for duty" standard now generally applied by psychiatrists and physicians in the interviews and testing which an employee can be requested and required to undergo.

There is nothing in this section to prohibit an official from advising an individual of a specific charge of sexual misconduct and affording him an opportunity to refute the charge voluntarily.

POLYGRAPHS

Section 1(f) makes it unlawful for any officer of any executive department or agency or any person acting under his authority to require or request or attempt to require or request any civilian employee or any applicant for employment to take any polygraph test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs, practices or concerning his attitude or conduct with respect to sexual matters. While this section does not eliminate the use of so-called lie detectors by Government, it assures that where such devices are used for these purposes it will be only in limited areas.

John McCart, representing the Government Employees Council of AFL–CIO, supported this section of the bill, citing a 1965 report by a special subcommittee of the AFL–CIO executive council that:

> The use of lie detectors violates basic considerations of human dignity in that they involve the invasion of privacy, self-incrimination, and the concept of guilt until proven innocent.

Congressional investigation [1] has shown that there is no scientific validation for the effectiveness or accuracy of lie detectors. Yet despite this and the invasion of privacy involved, lie detectors are being used or may be used in various agencies of the Federal Government for purposes of screening applicants or for pursuing investigations.

This section of the bill is based on complaints such as the following received by the subcommittee:

> When I graduated from college in 1965, I applied at NSA. I went to 2 days of testing, which apparently I passed because the interviewer seemed pleased and he told me that they could always find a place for someone with my type of degree.
>
> About 1 month later, I reported for a polygraph test at an office on Wisconsin Avenue in the District or just over the District line in Maryland. I talked with the polygraph operator, a young man around 25 years of age. He explained how the machine worked, etc. He ran through some of the questions before he attached the wires to me. Some of the questions I can remember are—
>
> "When was the first time you had sexual relations with a woman?
>
> "How many times have you had sexual intercourse?
>
> "Have you ever engaged in homosexual activities?
>
> "Have you ever engaged in sexual activities with an animal?
>
> "When was the first time you had intercourse with your wife?
>
> "Did you have intercourse with her before you were married? How many times?"

[1] Hearings and reports on the use of polygraphs as "lie detectors," by the Federal Government before a Subcommittee of the House Committee on Government Operations, April 1964 through 1966.

> He also asked questions about my parents, Communist activities, etc. I remember that I thought this thing was pretty outrageous, but the operator assured me that he asked everybody the same questions and he has heard all the answers before, it just didn't mean a thing to him. I wondered how he could ever get away with asking a girl those kind of questions.
>
> When I was finished, I felt as though I had been in a 15 round championship boxing match. I felt exhausted. I made up my mind then and there that I wouldn't take the job even if they wanted me to take it. Also, I concluded that I would never again apply for a job with the Government, especially where they make you take one of these tests.

Commenting on this complaint, the subcommittee chairman observed:

> Certainly such practices should not be tolerated even by agencies charged with security missions. Surely, the financial, scientific, and investigative resources of the Federal Government are sufficient to determine whether a person is a security risk, without strapping an applicant to a machine and subjecting him to salacious questioning. The Federal Bureau of Investigation does not use personality tests or polygraphs on applicants for employment. I fail to see why the National Security Agency finds them so fascinating.

COERCION TO BUY BONDS AND CONTRIBUTE TO CAUSES

The hearing record and subcommittee complaint files amply document the need for statutory protections against all forms of coercion of employees to buy bonds and contribute to causes. Involved here is the freedom of the individual to invest and donate his money as he sees fit, without official coercion. As the subcommittee chairman explained:

> It certainly seems to me that each Federal employee, like any other citizen in the United States, is the best judge of his capacity, in the light of his financial obligations, to participate or decide whether he will participate and the extent of his participation in a bond drive. That is a basic determination which he and he alone should make.
>
> I think there is an interference with fundamental rights when coercion of a psychological or economic nature is brought on a Federal employee, even to make him do right. I think a man has to have a choice of acting unwisely as well as wisely, if he is going to have any freedom at all.

The subcommittee has received from employees and their organizations numerous reports of intimidation, threats of loss of job, and security clearances and of denial of promotion for employees who do not participate to the extent supervisors wish. The hearing record contains examples of documented cases of reprisals, many of which have been investigated at the subcommittee's request and confirmed by the agency involved. It is apparent that policy statements and administrative rules are not sufficient to protect individuals from such coercion.

The president of the United Federation of Postal Clerks informed the subcommittee:

> Section 1, paragraph (i) of S. 3779 is particularly important to all Federal employees and certainly to our postal clerks. The extreme arm-twisting coercion, and pressure tactics exerted by some postmasters on our members earlier this year during the savings bond drive must not be permitted at any future time in the Government service.
>
> Our union received complaints from all over the country where low-paid postal clerks, most having the almost impossible problem of trying to support a family and exist on substandard wages, were practically being ordered to sign up for purchase of U.S. savings bonds, or else. The patriotism of our postal employees cannot be challenged. I recently was advised that almost 75 percent of postal workers are veterans of the Armed Forces and have proven their loyalty and patriotism to this great country of ours in the battlefield in many wars. Yet, some postmasters questioned this patriotism and loyalty if any employee could not afford to purchase a savings bond during the drive.

The president of the National Association of Government Employees testified:

> We are aware of instances wherein employees were told that if they failed to participate in the bond program they would be frozen in their position without promotional opportunities.
>
> In another agency the names of individuals who did not participate were posted for all to see. We have been made aware of this situation for some years and we know that Congress has been advised of the many instances and injustices Federal employees faced concerning their refusal or inability to purchase bonds.
>
> Certainly, the Government, which has thousands of public relations men in its agencies and departments, should be capable of promoting a bond program that does not include the sledge-hammer approach.

Some concern has been expressed by officials of the United Community Funds and Councils of America, the American Heart Association, Inc., and other charitable organizations, that the bill would hamper their campaigns in Federal agencies.

For this reason, the bill contains a proviso to express the intent of the sponsors that officials may still schedule meetings and take any appropriate action to publicize campaigns and to afford employees the opportunity to invest or donate their money voluntarily. It is felt that this section leaves a wide scope for reasonable action in promoting bond selling and charity drives.

The bill will prohibit such practices as were reported to the subcommittee in the following complaints:

> We have not yet sold our former home and cannot afford to buy bonds while we have both mortgage payments and rental payments to meet. Yet I have been forced to buy

bonds, as I was told the policy at this base is, "Buy bonds or by-by."

In short, after moving 1,700 miles for the good of the Government, I was told I would be fired if I didn't invest my money as my employer directed. I cannot afford to buy bonds, but I can't afford to be fired even more.

* * * * *

Not only were we forced to buy bonds, but our superiors stood by the time clock with the blanks for the United Givers Fund, and refused to let us leave until we signed up. I am afraid to sign my name, but I am employed at * * *.

* * * * *

A representative of the 14th District Department of the American Federation of Government Employees, Lodge 421, reported:

> The case of a GS–13 professional employee who has had the misfortune this past year of underwriting the expenses incurred by the last illness and death of both his mother and father just prior to this recent bond drive. This employee had been unofficially informed by his supervisor that he had been selected for a then existing GS–14 vacancy. When it became known that he was declining to increase his participation in the savings bond drive by increasing his payroll deduction for that purpose, he was informed that he might as well, in effect, kiss that grade 14 goodby.

DISCLOSURE OF ASSETS, DEBTS, AND PROPERTY

Sections (i) and (j) meet a need for imposing a reasonable statutory limitation on the extent to which an employee must reveal the details of his or his family's personal finances, debts, or ownership of property.

The subcommittee believes that the conflict-of-interest statutes, and the many other laws governing conduct of employees, together with appropriate implementing regulations, are sufficient to protect the Government from dishonest employees. More zealous informational activities on the part of management were recommended by witnesses in lieu of the many questionnaires now required.

The employee criticism of such inquiries was summarized as follows:

> There are ample laws on the statute books dealing with fraudulent employment, conflict of interest, etc. The invasion of privacy of the individual employee is serious enough, but the invasion of the privacy of family, relatives and children of the employee is an outrage against a free society.
>
> This forced financial disclosure has caused serious moral problems and feelings by employees that the agencies distrust their integrity. We do not doubt that if every employee was required to file an absolutely honest financial disclosure, that a few, though insignificant number of conflict-of-interest cases may result. However, the discovery of the few legal infractions could in no way justify the damaging effects of forced disclosures of a private nature. Further, it is our opinion that those who are intent on engaging in activities

which result in a conflict of interest would hardly supply that information on a questionnaire or financial statement. Many employees have indicated that rather than subject their families to any such unwarranted invasion of their right to privacy, that they are seriously considering other employment outside of Government.

The bill will reduce to reasonable proportions such inquiries as the following questionnaire, which many thousands of employees have periodically been required to submit.

(Questionnaire follows:)

CONFIDENTIAL STATEMENT OF EMPLOYMENT AND FINANCIAL INTERESTS
(FOR USE BY REGULAR GOVERNMENT EMPLOYEES)

NAME (Last, First, Initial)	TITLE OF POSITION

DATE OF APPOINTMENT IN PRESENT POSITION	ORGANIZATION LOCATION (Operating agency, Bureau Division)

PART I. EMPLOYMENT AND FINANCIAL INTERESTS

List the names of all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations, and educational, or other institutions: (a) with which you are connected as an employee, officer, owner, director, member, trustee, partner, adviser, or consultant; or (b) in which you have any continuing financial interests, through a pension or retirement plan, shared income, or other arrangement as a result of any current or prior employment or business or professional association; or (c) in which you have any financial interest through the ownership of stock, stock options, bonds, securities, or other arrangements including trusts. If none, write NONE.

NAME AND KIND OF ORGANIZATION (Use Part I designations where applicable)	ADDRESS	POSITION IN ORGANIZATION (Use Part I(a) designations, if applicable)	NATURE OF FINANCIAL INTEREST, e.g., STOCKS, PRIOR INCOME (Use Part I(b) & (c) designations if applicable)

PART II. CREDITORS

List the names of your creditors other than those to whom you may be indebted by reason of a mortgage on property which you occupy as a personal residence or to whom you may be indebted for current and ordinary household and living expenses such as household furnishings, automobile, education, vacation, and similar expenses. If none, write NONE.

NAME AND ADDRESS OF CREDITOR	CHARACTER OF INDEBTEDNESS, e.g., PERSONAL LOAN, NOTE, SECURITY

PART III. INTERESTS IN REAL PROPERTY

List your interest in real property or rights in lands, other than property which you occupy as a personal residence. If none, write NONE.

NATURE OF INTEREST, e.g., OWNERSHIP, MORTGAGE, LIEN, INVESTMENT TRUST	TYPE OF PROPERTY, e.g., RESIDENCE, HOTEL, APARTMENT, UNDEVELOPED LAND	ADDRESS (If rural, give RFD or county and State)

PART IV. INFORMATION REQUESTED OF OTHER PERSONS

If any information is to be supplied by other persons, e.g., trustee, attorney, accountant, relative, please indicate the name and address of such persons, the date upon which you requested that the information be supplied, and the nature of subject matter involved. If none, write NONE.

NAME AND ADDRESS	DATE OF REQUEST	NATURE OF SUBJECT MATTER

(THIS SPACE RESERVED FOR ADDITIONAL INSTRUCTIONS)

I certify that the statements I have made are true, complete, and correct to the best of my knowledge and belief.

(Date) _____ (Signature) _____

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The vagueness of the standards for requiring such a broad surrender of privacy is illustrated by the Civil Service Commission's regulation applying this to any employee whose duties have an "economic impact on a non-Federal enterprise."

Also eliminated will be questionnaires asking employees to list "all assets, or everything you and your immediate family own, including date acquired and cost or fair market value at acquisition. (Cash in banks, cash anywhere else, due from others—loans, et cetera, automobiles, securities, real estate, cash surrender of life insurance; personal effects and household furnishings and other assets.)"

The view of the president of the United Federation of Postal Clerks reflected the testimony of many witnesses endorsing sections 1 (i) and (j) of the bill.

> If the conflict-of-interest questionnaire is of doubtful value in preventing conflict of interest, as we believe, we can only conclude that it does not meet the test of essentiality and that it should be proscribed as an unwarranted invasion of employee privacy. Such value as it may have in focusing employee attention upon the problem of conflict of interest and bringing to light honest oversights that may lead to conflict of interest could surely be achieved by drawing attention to the 26 or more laws pertaining to conflict of interest or by more zealous information activities on the part of management.

The complex problem of preserving the confidential nature of such reports was described by officials of the National Association of Internal Revenue Employees:

> The present abundance of financial questionnaires provides ample material for even more abusive personnel practices. It is almost inevitable that this confidential information cannot remain confidential. Typically, the financial questionnaire is filed with an employee's immediate supervisor. The net worth statements ultimately go into Inspection, but they pass through the hands of local personnel administrators. We have received a great number of disturbing reports—as have you—that this information about employees' private affairs is being used for improper purposes, such as enforced retirement and the like.

Inadequacies in agency procedures for obtaining such information from employees and for reviewing and storing it, are discussed in the Subcommittee report for the 89th Congress, 2d Session. Widely disparate attitudes and practices are also revealed in a Subcommittee study contained in the appendix of the printed hearings on S. 3779.

The bill will make such complaints as the following unnecessary in the future conduct of the Federal Government:

DEAR SENATOR ERVIN: I am writing to applaud the stand you have taken on the new requirement that Federal employees in certain grades and categories disclose their financial holdings to their immediate superior. Having been a civil service employee for 26 years, and advanced from GS–4 to GS–15, and been cleared for top secret

during World War II, and because I currently hold a position that involves the disposition of hundreds of thousands of the taxpayers' money, it is my conviction that my morality and trustworthiness are already a matter of record in the files of the Federal Government.

The requirement that my husband's financial assets be reported, as well as my own assets and those we hold jointly, was particularly offensive, since my husband is the head of our household and is not employed by Government.

You might also be interested in the fact that it required 6 hours of after-hours work on our part to hunt up all the information called for and prepare the report. Since the extent of our assets is our private business, it was necessary that I type the material myself, an added chore since I am not a typist.

Our assets have been derived, in the main, from laying aside a portion of our earnings. At our ages (64 and 58) we would be far less deserving of respect had we not made the prudent provisions for our retirement which our assets and the income they earn represent. Yet this reporting requirement carries with it the implication that to have "clean hands" it would be best to have no assets or outside, unearned income when you work for the Federal Government.

For your information I am a GS–15, earning $19,415 * * *

Thank you for speaking out for the continually maligned civil servant.

Sincerely yours,

———, ———.

DEAR SENATOR ERVIN: I am a GS–12 career employee with over 15 years service.

The highest moral and ethical conduct has been my goal in each of my positions of employment and I have found this to be true of a vast majority of my fellow workers. It may be true a few people do put material gain ahead of their ethics but generally these people are in the higher echelons of office where their influence is much greater.

Our office has recently directed each employee from file clerk to the heads of sections to file a "Statement of Financial Interest." As our office has no programs individuals could have a financial interest in and especially no connections with FHA I feel it is no one's business but my own what real estate I own. I do not have a FHA mortgage or any other real property and have no outside employment, hence have nothing to hide by filing a blank form. Few Government workers can afford much real property. The principal of reporting to "Big Brother" in every phase of your private life to me is very degrading, highly unethical and very unquestionable as to its effectiveness. If I could and did use my position in some way to make a profit I would be stupid to report it on an agency inquiry form. What makes officials think reporting will do away with graft?

When the directive came out many man-hours of productive work were lost in discussions and griping. Daily since that date at some time during the day someone brings up the subject. The supervisors filed their reports as "good" examples but even they objected to this inquiry.

No single thing was ever asked of Government employees that caused such a decline in their morale. We desperately need a "bill of

rights" to protect ourselves from any further invasion of our private lives.

Fifteen years ago I committed myself to Government service because: (a) I felt an obligation to the Government due to my education under the GI bill, (b) I could obtain freedom from pressures of unions, (c) I could obtain freedom from invasion of my private life, and (d) I would be given the opportunity to advance based solely on my professional ability and not on personal politics. At this point I certainly regret my decision to make the Government my career.

Sincerely,

———, ———.

DEAR SENATOR: I write to beg your support of a "bill of rights" to protect Federal employees from official snooping which was introduced by Senator Ervin of North Carolina.

I am a veteran of two wars and have orders to a third war as a ready reservist. And I know why I serve in these wars: that is to prevent the forces of tyranny from invading America.

Now, as a Federal employee I must fill out a questionnaire giving details of my financial status. This is required if I am to continue working. I know that this information can be made available to every official in Washington, including those who want to regulate specific details of my life.

Now I am no longer a free American. For example, I can no longer buy stock of a foreign company because that country may be in disfavor with officials of the right or left. And I cannot "own part of America" by buying common stocks until an "approved list" is published by my superiors.

I can never borrow money because an agent may decide that debt makes me susceptible to bribery by agents of an enemy power. Nor do I dare own property lest some official may decide I should sell or rent to a person or group not of my choosing.

In short, I am no longer free to plan my own financial program for the future security of my family. In 1 day I was robbed of the freedom for which I fought two wars. This is a sickening feeling, you may be sure.

It seems plain that a deep, moral issue is involved here that concerns every citizen. If this thing is allowed to continue, tomorrow or next year every citizen may come under the inquisition. The dossier on every citizen will be on file for the use of any person or group having enough overt or covert power to gain access to them.

Sincerely,

———, ———.

In August 1966, Federal employees who were retired from the armed services were told to complete and return within 7 days, with their social security numbers, a 15-page questionnaire, asking, among other things:

> How much did you earn in 1965 in wages, salary, commissions, or tips from all jobs?
>
> How much did you earn in 1965 in profits or fees from working in your own business, professional practice, partnership, or farm?

How much did you receive in 1965 from social security, pensions (nonmilitary) rent (minus expenses), interests or dividends, unemployment insurance, welfare payments, or from any other source not already entered?

How much did other members of your family earn in 1965 in wages, salary, commissions or tips? (Before any deductions.) (For this question, a family consists of two or more persons in the same household who are related to each other by blood, marriage, or adoption.) If the exact amount is not known, give your best estimate.

How much did other members of your family earn in 1965 in profits or fees from working in their own business, professional practices, partnership, or farm?

How much did any other member of your family receive in 1965 from social security, pensions, rent (minus expenses), interest or dividends, unemployment insurance, welfare payments; or from any other source not already entered?

RIGHT TO COUNSEL

Section 1(k) of the bill guarantees to Federal workers the opportunity of asking the presence of legal counsel, of a friend or other person when undergoing an official interrogation or investigation that could lead to the loss of their jobs or to disciplinary action.

The merits of this clause are manifold; not least of which is that uniformity and order it will bring to the present crazy quilt practices of the various agencies concerning the right to counsel for employees facing disciplinary investigations or possible loss of security clearances tantamount to loss of employment. The Civil Service Commission regulations are silent on this critical issue. In the absence of any Commission initiative or standard, therefore, the employing agencies are pursuing widely disparate practices. To judge from the questionnaires and other evidence before the subcommittee, a few agencies appear to afford a legitimate right to counsel, probably many more do not, and still others prescribe a "right" on paper but hedge it in such a fashion as to discourage its exercise. Some apparently do not set any regulatory standard, but handle the problem on an ad hoc basis.

On a matter as critical as this, such a pointless diversity of practice is poor policy. So far as job-protection rights are concerned, all Federal employees should be equal.

A second anomaly in the present state of affairs derives from recent developments in the law of the sixth amendment by the Supreme Court. In view of the decisions of *Miranda* v. *Arizona*, 384 U.S. 436 and *Escobedo* v. *Illinois*, 378 U.S. 478, it is clear that any person (including Federal employees) who is suspected of a crime is absolutely entitled to counsel before being subjected to custodial interrogation. Accordingly, some agencies, such as the Internal Revenue Service, acknowledge an unqualified right to counsel for an employee suspected of crime but decline to do the same for coworkers threatened with the loss of their livelihoods for noncriminal reasons. In the subcommittee's view, this discrimination in favor of the criminal suspect is both bad personnel policy as well as bad law. It would be corrected by this section of the bill.

The ultimate justification for the "right-to-counsel" clause, however, is the Constitution itself. There is no longer any serious doubt that Federal employees are entitled to due process of law as an incident of their employment relation. Once, of course, the courts felt otherwise, holding that absent explicit statutory limitation, the power of the executive to deal with employees was virtually unfettered.

The doctrinal underpinning of this rule was the 19th-century notion that the employment relation is not tangible "property." Both the rule and its underpinning have now been reexamined. The Supreme Court in recent years has emphasized the necessity of providing procedural due process where a man is deprived of his job or livelihood by governmental action.

While the courts have as yet had no occasion to articulate a specific right to counsel in the employment relationship, there can obviously be no doubt that the right to counsel is of such a fundamental character that it is among the essential ingredients of due process. What is at stake for an employee in a discharge proceeding—often including personal humiliation, obloquy and penury—is just as serious as that involved in a criminal trial. This is not to suggest that all the incidents of our civilized standard of a fair trial can or should be imported into Federal discharge proceedings. But if we are to have fair play for Federal employees, the right of counsel is a sine qua non. It is of a piece with the highest traditions, the fairest laws, and the soundest policy that this country has produced. And, in the judgment of this subcommittee, the clear affirmation of this basic right is very long overdue.

The need for such protection was confirmed at the hearings by all representatives of Government employee organizations and unions.

The president of the National Association of Letter Carriers testified:

> It is a practice in the postal inspection service, when an employee is called in for questioning by the inspectors on a strictly postal matter that does not involve a felony, to deny the right of counsel. The inspectors interrogate the employee at length and, at the completion of the interrogation, one of the inspectors writes out a statement and pressures the employee to sign it before he leaves the room. We have frequently asked the postal inspection service to permit these employees to have counsel present at the time of the interrogation. The right for such counsel has been denied in all except a few cases. If the employee is charged with a felony, then, of course, the law takes over and the right for counsel is clearly established but in other investigations and interrogations no counsel is permitted.

Several agencies contend that right to counsel is now granted in formal adverse action proceedings and that appeals procedures make this section unnecessary for informal questioning. Testimony and complaints from employees indicate that this machinery does not effectively secure the opportunity of the employee to defend himself early enough in the investigation to allow a meaningful defense.

The predicament of postal employees as described at the hearings reflects the situation in other agencies as reported in many individual

cases sent to the subcommittee. While it is undoubtedly true that in some simple questioning, counsel may not be necessary, in many matters where interrogation will result in disciplinary action, failure to have counsel at the first level reacts against the employee all the way up through the appeal and review. In the case of a postal employee, the subcommittee was told—

> The first level is at the working foreman's level. He is the author of the charges; then the case proceeds to the postmasted, who appointed the foreman and, if the individual is found guilty of the charge at the first level, it is almost inevitable that this position will be supported on the second level. The third level is the regional level, and the policy there is usually that of supporting the local postmaster. A disinterested party is never reached. The fourth level is the Appeals Board, composed of officials appointed by the Postmaster General. In some cases, the region will overrule the postmaster, but certainly the individual does not have what one could style an impartial appeals procedure.

Employees charged with no crime have been subjected to intensive interrogations by Defense Department investigators who ask intimate questions, make sweeping allegations, and threaten dire consequences unless consent is given to polygraph tests. Employees have been ordered to confess orally or to write and sign statements. Such interviews have been conducted after denial of the employee's request for presence of supervisor, counsel, or friend, and in several instances the interrogations have resulted in revocation of a security clearance, or denial of access to classified information by transfer or reassignment, with the resulting loss of promotion opportunities.

Witnesses testified that employees have no recourse against the consequences of formal charges based on information and statements acquired during a preliminary investigation. This renders meaningless the distinction urged by the Civil Service Commission between formal and informal proceedings.

EXCEPTIONS

The act, under section 9, does not apply to the Federal Bureau of Investigation. Furthermore, section 6 provides that nothing in the act will prohibit an official of the Central Intelligence Agency and the National Security Agency from requesting any employee or applicant to take a polygraph test or a psychological test, or to provide a personal financial statement designed to elicit the personal information protected under subsections 1 (e), (f), (i), and (j). In such cases, the Director of the agency or his designee must make a personal finding with regard to each individual to be tested or examined that such test or information is required to protect the national security.

An exception to the right-to-counsel section has been provided to limit this right for employees in the Central Intelligence Agency and the National Security Agency to a person who serves in the same agency or a counsel cleared by the agency for access to the information involved. Obviously, it is expected that the employee's right to be accompanied by the person of his choice will not be denied unless that person's access to the information for the purpose of the case is clearly

inconsistent with the national security. Other language recognizes problems unique to these two agencies. For instance, section 7 requires exhaustion of remedies by employees of the Central Intelligence Agency and the National Security Agency and states that the act does not affect whatever existing statutory authority these agencies now possess to terminate employment. Section 8 is designed to assure that nothing in the act is construed to affect negatively any existing statutory or executive authority of the Directors of the Central Intelligence Agency and National Security Agency to protect their information in cases involving their employees. Consequently, procedures commended to the subcommittee by the Director of the Central Intelligence Agency are spelled out for asserting that authority in certain proceedings arising under the act. Other committee amendments to S. 1035, as detailed earlier, were adopted to meet administrative requirements of the Federal security program and the intelligence community as well as the management needs of the executive branch.

ENFORCEMENT

Enforcement of the rights guaranteed in sections 1 and 2 of the bill is lodged in the administrative and civil remedies and sanctions of sections 3, 4, and 5. Crucial to enforcement of the act is the creation of an independent Board on Employee Rights to determine the need for disciplinary action against civilian and military offenders under the act and to provide relief from violations.

Testimony at the hearings as well as investigation of complaints have demonstrated that in the area of employee rights, a right is only as secure as its enforcement. There is overwhelming evidence that employees have heretofore frequently lacked appropriate remedies either in the courts or the Civil Service Commission for pursuing rights which belong to them as citizens.

Under the remedies afforded by sections 3, 4, and 5 of the bill, an employee who believes his rights are violated under the act has several courses of action:

(1) He may pursue a remedy through the agency procedures established to enforce the act, but the fact that he does not choose to avail himself of these does not preclude exercise of his right to seek other remedies.

(2) He may register his complaint with the Board on Employee Rights and obtain a hearing. If he loses there, he may appeal to the district court, which has the power to examine the record as a whole and to affirm, modify, or set aside any determination or order, or to require the Board to take any action it was authorized to take under the act.

(3) He may, instead of going directly to the Board, institute a civil action in Federal district court to prevent the threatened violation, or obtain complete redress against the consequences of the violation.

He does not need to exhaust any administrative remedies but if he elects to pursue his civil remedies in the court under section 4, he may not seek redress through the Board. Similarly, if he initiates action before the Board under section 5, he may not also seek relief from the court under section 4.

The bill does not affect any authority, right or privilege accorded under Executive Order 11491 governing employee-management cooperation in the Federal service. To the extent that there is any overlapping of subject matter, the bill simply provides an additional remedy.

THE BOARD ON EMPLOYEE RIGHTS

As a result of hearings on S. 3779, the section creating a Board on Employee Rights was added to the bill for introduction as S. 1035.

Employees have complained that administrative grievance procedures have often proved ineffective because they are cumbersome, time-consuming, and weighted on the side of management. Not only do those who break the rules go unpunished many times, but the fearful tenor of letters and telephone calls from throughout the country indicate that employees fear reprisals for noncompliance with improper requests or for filing of complaints and grievances. Oral and written directives of warning to this effect have been verified by the subcommittee. Section 1(e) of the bill, therefore, prevents reprisals for exercise of rights granted under the act and in such event accords the individual cause for complaint before the Board or the court.

Concerning the original bill in the 89th Congress, which did not provide for a board, representatives of the 14th department of the American Federation of Government Employees commented that the remedies are the most important aspects of such a bill because "unless due process procedures are explicitly provided, the remaining provisions of the bill may be easily ignored or circumvented by Federal personnel management. As a matter of fact, we believe, the reason employees' rights have been eroded so rapidly and so devastatingly in the last few years is the absence of efficient, expeditious, uniform, and legislatively well defined procedures of due process in the executive departments of the Federal Government."

An independent and nonpartisan Board is assured by congressional participation in its selection and by the fact that no member is to be a government employee. Provision is made for congressional monitoring through detailed reports.

Senator Ervin explained the function of the Board established by section 5 as follows:

> The bill sets up a new independent Federal agency with authority to receive complaints and make rulings on complaints—complaints of individual employees or unions representing employees. This independent agency, which would not be subject in any way to the executive branch of the Government, would be authorized to make rulings on these matters in the first instance. It would make a ruling on action in a particular agency or department that is an alleged violation of the provisions of the bill, with authority either on the part of the agency or the part of the individual or on the part of the union to take an appeal from the ruling of this independent agency to the Federal court for judicial review.

Throughout its study the subcommittee found that a major area of concern is the tendency in the review process in the courts or agencies to do no more than examine the lawfulness of the action or decision about which the employee has complained. For purposes of

enforcing the act, sections 3, 4 and 5 assure adequate machinery for processing complaints and for prompt and impartial determination of the fairness and constitutionality of general policies and practices initiated at the highest agency levels or by the Civil Service Commission or by Executive order.

Finding no effective recourse against administrative actions and policies which they believed unfair or in violation of their rights, individual employees and their families turned to Congress for redress. Opening the hearings on invasions of privacy, Senator Ervin stated:

> Never in the history of the Subcommittee on Constitutional Rights have we been so overwhelmed with personal complaints, phone calls, letters, telegrams, and office visits. In all of our investigations I have never seen anything to equal the outrage and indignation from Government employees, their families, and their friends. It is obvious that appropriate remedies are not to be found in the executive branch.
>
> The complaints of privacy invasions have multiplied so rapidly of late that it is beyond the resources of Congress and its staff to repel effectively each individual official encroachment. Each new program brings a new wave of protest.

Prof. Alan Westin, director of the Science and Law Committee of the Bar Association of the city of New York, testified that these complaints "have been triggered by the fact that we do not yet have the kind of executive branch mechanism by which employees can lodge their sense of discomfort with personnel practices in the Federal Government and feel that they will get a fair hearing, that they will secure what could be called 'employment due process.' "

To meet this problem, Professor Westin proposed an independent board subject to judicial review, and with enforcement power over a broad statutory standard governing all invasion of privacy. Although it is continuing to study this proposal, the subcommittee has temporarily rejected this approach in the interest of achieving immediate enforcement of the act and providing administrative remedies for its violation. For this reason it supports the creation of a limited Board on Employee Rights.

Perhaps one of the most important sections of the bill, if not the most important section, according to the United Federation of Postal Clerks, is the provision establishing the Board. The subcommittee was told—

> It would appear absolutely essential that any final legislation enacted into law must necessarily include such a provision. We can offer no suggestions for improvement of this section. As presently constituted the section is easily understood; and the most excellent and inclusive definition of the proposed "Board on Employees' Rights" which could possibly be enacted into law. It defines the right of employees to challenge violations of the proposed act; defines the procedures involved, as well as the authority of the Board, penalties for violation of the act, as well as establishing the right of judicial review for an aggrieved party, and finally provides for congressional review, and in effect, an annual audit by the Congress of all complaints, decisions, orders, and other

related information resulting from activities and operations of the proposed act.

Sanctions

The need for sanctions against offending officials has been evident throughout the subcommittee's investigation of flagrant disregard of basic rights and unpunished flaunting of administrative guidelines and prohibitions. It was for this reason that S. 3779 of the 89th Congress and S. 1035, as introduced, contained criminal penalties for offenders and afforded broad civil remedies and penalties.

Reporting on the experiences of the American Civil Liberties Union in such employee cases, Lawrence Speiser testified:

> In filing complaints with agencies including the Civil Service Commission, the Army and the Navy, as I have during the period of time I have worked here in Washington, I have never been informed of any disciplinary action taken against any investigator for asking improper questions, for engaging in improper investigative techniques, for barring counsel when a person had a right to have counsel, or for a violation of any number of things that you have in this bill. Maybe some was taken, but I certainly couldn't get that information out of the agencies, after making the complaints. I would suggest that the bill also encompass provision for disciplinary action that would be taken against Federal employees who violate any of these rights that you have set out in the bill.

Other witnesses also pointed to the need for the disciplinary measures afforded by the powers of an independent Board to determine the need for corrective action and punishment, and felt they would be more effective than criminal penalties.

In view of the difficulty of filing criminal charges and obtaining prosecution and conviction of executive branch officials which might render the criminal enforcement provision meaningless for employees, the criminal penalties were deleted and a Board on Employee Rights incorporated into the scheme of remedies and sanctions in the bill.[1]

Although the Civil Service Commission and the executive agencies have advocated placing such administrative remedies within the civil service grievance and appeals system, the subcommittee believes that the key to effective enforcement of the unique rights recognized by this act lies in the employee's recourse to an independent body.

"The theory of our Government," Professor Westin testified, "is that there should be somewhere within the executive branch where this kind of malpractice is corrected and that good administration ought to provide for control of supervision or other practices that are not proper. But the sheer size of the Federal Establishment, the ambiguity of the relationship of the Civil Service Commission to employees, and the many different interests that the Civil Service Commission has to bear in its role in the Federal Government, suggest that it is not an effective instrument for this kind of complaint procedure."

[1] In the 89th Congress, S. 1035.

SECTION-BY-SECTION ANALYSIS

SECTION 1

Section 1(a)

Section 1(a) makes it unlawful for a Federal official of any department or agency to require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency or any person seeking employment to disclose his race, religion, or national origin, or the race, religion, or national origin of any of his forebears.

This section does not prohibit inquiry concerning citizenship of such individual if his citizenship is a statutory condition of his obtaining or retaining his employment. Nor does it preclude inquiry of the individual concerning his national origin or citizenship or that of his forebears when such inquiry is thought necessary or advisable in order to determine suitability for assignment to activities or undertakings related to national security within the United States or to activities or undertakings of any nature outside the United States.

This provision is directed at any practice which places the employee or applicant under compulsion to reveal such information as a condition of the employment relation. It is intended to implement the concept underlying the Federal merit system by which a person's race, religion, or national origin have no bearing on his right to be considered for Federal employment or on his right to retain a Federal position. This prohibition does not limit the existing authority or the executive branch to acquire such information by means other than self-disclosure.

Section 1(b)

Section 1(b) makes it unlawful for any officer of any executive department or executive agency of the U.S. Government, or for any person acting or purporting to act under this authority, to state, intimate, or to attempt to state or intimate, to any civilian employee of the United States serving in the department or agency that any notice will be taken of his attendance or lack of attendance at any assemblage, discussion, or lecture held or called by any officer of the executive branch of the U.S. Government, or by any person acting or purporting to act under his authority, or by any outside parties or organizations to advise, instruct, or indoctrinate any civilian employee of the United States serving in the department or agency in respect to any matter or subject other than (1) the performance of official duties to which he is or may be assigned in the department or agency, or (2) the development of skills, knowledge, or abilities which qualify him for the performance of such duties.

Nothing contained in this section is to be construed to prohibit taking notice of the participation of a civilian employee in the activities of any professional group or association.

This provision is designed to protect any employee from compulsion to attend meetings, discussions, and lectures on political, social, and economic subjects unrelated to his duties. It prevents Government officials from using the employment relationship to attempt to influence employee thoughts, attitudes, and actions on subjects which may be of concern to them as private citizens. In particular, this language is directed at practices and policies which in effect require attendance

at such functions, including official lists of those attending or not attending; its purpose is to prohibit threats, direct or implied, written or oral, of official retaliation for nonattendance.

This section does not affect existing authority for providing information designed to promote the health and safety of employees. Nor does it affect existing authority to call meetings for the purpose of publicizing and giving notice to activities or service, sponsored by the department or agency, or campaigns such as charitable fund campaigns and savings bond drives.

Section 1(c)

Section 1(c) makes it unlawful for any officer of any executive department or agency, or for any person acting or purporting to act under his authority, to require or request or to attempt to require or request any civilian employee serving in the department or agency to participate in any way in any activities or undertakings unless they are related to the performance of official duties to which he is or may be assigned in the department or agency or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties.

This section is directed against official practices, requests, or orders that an employee take part in any civic function, political program, or community endeavor, or other activity which he might enjoy as a private citizen, but which is unrelated to his employment. It does not affect any existing authority to use appropriate techniques for publicizing existence of community programs such as blood-donation drives, or agency programs, benefits or services, and for affording opportunity for employee participation if he desires.

Section 1(d)

Section 1(d) makes it unlawful for any officer of any executive department or agency, or for any person acting under his authority to require or request or attempt to require or request, any civilian employee serving in the department or agency to make any report of his activities or undertakings unless they are related to the performance of official duties or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties, or (2) unless there is reason to believe that the employee is engaged in outside activities or employment in conflict with his official duties.

This section is a minimum guarantee of the freedom of an employee to participate or not to participate in any endeavor or activity in his private life as a citizen, free of compulsion to report to supervisors his action or his inaction, his involvement or his noninvolvement. This section is to assure that in his private thoughts, actions, and activities he is free of intimidation or inhibition as a result of the employment relation.

The exceptions to the prohibition are not legislative mandates to require such information in those circumstances, but merely provide an area of executive discretion for reasonable management purposes and for observance and enforcement of existing laws governing employee conduct and conflicts of interest.

Section 1(e)

Section 1(e) makes it unlawful for any officer of any executive department or agency, or any person acting under his authority, to

require or request any civilian employee serving in the department or agency, or any person applying for employment as a civilian employee to submit to any interrogation or examination or to take any psychological test designed to elicit from him any information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

In accordance with an amendment made after hearings on S. 3779, a proviso is included to assure that nothing contained in this section shall be construed to prevent a physician from eliciting such information or authorizing such test in the diagnosis or treatment of any civilian employee or applicant where he feels the information is necessary to enable him to determine whether or not the individual is suffering from mental illness. The bill as introduced limited this inquiry to psychiatrists, but an amendment extended it to physicians, since the subcommittee was told that when no psychiatrist is available, it may be necessary for a general physician to obtain this information in determining the presence of mental illness and the need for further treatment.

This medical determination is to be made in individual cases and not pursuant to general practice or regulation governing the examination of employees or applicants according to grade, agency, or duties.

Under an amendment to the bill, this language is not to be construed to prohibit an official from advising an employee or applicant of a specific charge of sexual misconduct made against that person and affording him an opportunity to refute the charge. While providing no authority to request or demand such information, the section does not prevent an official who has received charges of misconduct which might have a detrimental effect on the person's employment from obtaining a clarification of the matter if the employee wishes to provide it.

This section would not prohibit all personality tests but merely those questions on the tests which inquire into the three areas in which citizens have a right to keep their thoughts to themselves.

It raises the criterion for requiring such personal information from the general "fitness for duty" test to the need for diagnosing or treating mental illness. The second proviso is designed to prohibit mass-testing programs. The language of this section provides guidelines for the various personnel and medical specialists whose practices and determinations may invade employee's personal privacy and thereby affect the individual's employment prospects or opportunities for advancement.

An amendment in section 6 provided an exception to this prohibition in the case of the use of such psychological tests by the Central Intelligence Agency and the National Security Agency, only if the Director of the agency or his designee makes a personal finding that the information is necessary to protect the national security.

Section 1(f)

Section 1(f) makes it unlawful for any officer of any executive department or agency or any person acting under his authority, to require or request or attempt to require or request any civilian employee or any applicant for employment to take any polygraph test designed to elicit from him information concerning his personal relationship with

any person connected with him by blood or marriage, or concerning his religious beliefs or practices or concerning his attitude or conduct with respect to sexual matters. While this section does not eliminate entirely the use of so-called lie detectors in Government, it assures that where such devices are used, officials may not inquire into matters which are of a personal nature.

As with psychological testing, the Central Intelligence Agency and the National Security Agency, under section 6, are not prohibited from acquiring such information by polygraph, provided certain conditions are met.

Section 1(g)

Section 1(g) makes it illegal for an official to require or request an employee under his management to support the nomination or election of anyone to public office through personal endeavor, financial contribution, or any other thing of value. An employee may not be required or requested to attend any meeting held to promote or support the activities or undertakings of any political party in the United States.

The purpose of this section is to assure that the employee is free from any job-related pressures to conform his thoughts and attitudes and actions in political matters unrelated to his job to those of his supervisors. With respect to his superiors, it protects him in the privacy of his contribution or lack of contribution to the civic affairs and political life of his community, State and Nation. In particular, it protects him from commands or requests of his employer to buy tickets to fundraising functions, or to attend such functions, to compile position papers or research material for political purposes, or make any other contribution which constitutes a political act or which places him in the position of publicly expressing his support or nonsupport of a party or candidate. This section also assures that, although there is no evidence of such activities at present, no Federal agency may in the future improperly involve itself in the undertakings of any political party in the United States, its territories, or possessions.

Section 1(h)

Section 1(h) makes it illegal for an official to coerce or attempt to coerce any civilian employee in the department or agency to invest his earnings in bonds or other Government obligations or securities, or to make donations to any institution or cause. This section does not prohibit officials from calling meetings or taking any other appropriate action to afford employees the opportunity voluntarily to invest his earnings in bonds or other obligations or voluntarily to make donations to any institution or cause. Appropriate action, in the committee's view, might include publicity and other forms of persuasion short of job-related pressures, threats, intimidation, reprisals of various types, and "blacklists" circulated through the employee's office or agency to publicize his noncompliance.

Section 1(i)

Section 1(i) makes it illegal for an official to require or request any civilian employee in the department or agency to disclose any items of his property, income, or other assets, source of income, or liabilities, or his personal or domestic expenditures or those of any member of his family. Exempted from coverage under this provision is any civil-

ian employee who has authority to make any final determination with respect to the tax or other liability to the United States of any person, corporation, or other legal entity, or with respect to claims which require expenditure of Federal moneys. Section 6 provides certain exemptions for two security agencies.

Neither the Department of the Treasury nor any other executive department or agency is prohibited under this section from requiring any civilian employee to make such reports as may be necessary or appropriate for the determination of his liability for taxes, tariffs, custom duties, or other obligations imposed by law. This proviso is to assure that Federal employees may be subject to any reporting or disclosure requirements demanded by any law applicable to all persons in certain circumstances.

Section 1(j)

Section 1(j) makes it illegal to require or request any civilian employee exempted from application of section 3(i) under the first proviso of that section, to disclose any items of his property, income, or other assets, source of income, or liabilities, or his personal or domestic expenditure or those of any member of his family or household other than specific items tending to indicate a conflict of interest in respect to the performance of any of the official duties to which he is or may be assigned.

This section is designed to abolish and prohibit broad general inquiries which employees have likened to "fishing expeditions" and to confine any disclosure requirements imposed on an employee to reasonable inquiries about job-related financial interests. This does not preclude, therefore, questioning in individual cases where there is reason to believe the employee has a conflict of interest with his official duties.

Section 1(k)

Section 1(k) makes it unlawful for a Federal official of any department or agency to require or request, or attempt to require or request, a civilian employee who is under investigation for misconduct, to submit to interrogation which could lead to disciplinary action without the presence of counsel or other person of his choice, if he wishes.

This section is intended to rectify a longstanding denial of due process by which agency investigators and other officials prohibit or discourage presence of counsel or a friend. This provision is directed at any interrogation which could lead to loss of job, pay, security clearance, or denial of promotion rights.

This right insures to the employee at the inception of the investigation, and the section does not require that the employee be accused formally of any wrongdoing before he may request presence of counsel or friend. The section does not require the agency or department to furnish counsel.

A committee amendment to S. 782 adds a proviso that a civilian employee serving in the Central Intelligence Agency or the National Security Agency may be accompanied only by a person of his choice who serves in the agency in which the employee serves, or by counsel who has been approved by the agency for access to the information involved.

Section 1(1)

Section 1 (1) makes it unlawful for a Federal official of any department or agency to discharge, discipline, demote, deny promotion, relocate, reassign, or otherwise impair existing terms or conditions of employment of any employee, or threaten to commit any such acts, because the employee has refused or failed to comply with any action made unlawful by this act or exercised any right granted by the act.

This section prohibits discrimination against any employee because he refuses to comply with an illegal order as defined by this act or takes advantage of a legal right embodied in the act.

SECTION 2

Section 2(a) makes it unlawful for any officer of the U.S. Civil Service Commission or any person acting or purporting to act under his authority to require or request, or attempt to require or request, any executive department or any executive agency of the U.S. Government, or any officer or employee serving in such department or agency, to violate any of the provisions of section 1 of this act.

Specifically, this section is intended to ensure that the Civil Service Commission, acting as the coordinating policymaking body in the area of Federal civilian employment shall be subject to the same strictures as the individual departments or agencies.

Section 2(b) makes it unlawful for any officer of the U.S. Civil Service Commission, or any person acting or purporting to act under his authority, to require or request, or attempt to require or request, any person seeking to establish civil service status or eligibility for civilian employment, or any person applying for employment, or any civilian employee of the United States serving in any department or agency, to submit to any interrogation or examination or to take any psychological test which is designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

This section is intended to assure that the Civil Service Commission shall be subject to the same prohibitions to which departments and agencies are subject in sections 1 (e) and (f). The provisos contained in section 1(e) are restated here to assure that nothing in this section is to be construed to prohibit a physician from acquiring such data to determine mental illness, or an official from informing an individual of a specific charge of sexual misconduct and affording him an opportunity to refute the charge.

Section 2(c) makes it unlawfull for any officer of the U.S. Civil Service Commission to require or request any person seeking to establish civil service status or eligibility for employment, or any person applying for employment in the executive branch of the U.S. Government, or any civilian employee serving in any department or agency to take any polygraph test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

This section applies the provisions of section 1(f) to the Civil Service Commission in instances where it has authority over agency personnel practices or in cases in which its officials request information from the applicant or employee.

SECTION 3

This section applies the act to military supervisors by making violations of the act also violations of the Uniform Code of Military Justice.

SECTION 4

Section 4 provides civil remedies for violations of the act by granting an applicant or employee the right to bring a civil action in the Federal district court for a court order to halt the violation, or to obtain complete redress against the consequences of the violation. The action may be brought in his own behalf or in behalf of himself and others similarly situated, and the action may be filed against the offending officer or person in the Federal district court for the district in which the violation occurs or is threatened, or in the district in which the offending officer or person is found, or in the District Court for the District of Columbia.

The court hearing the case shall have jurisdiction to adjudicate the civil action without regard to the actuality or amount of pecuniary injury done or threatened. Moreover, the suit may be maintained without regard to whether or not the aggrieved party has exhausted available administrative remedies. If the individual complainant has pursued his relief through administrative remedies established for enforcement of the act and has obtained complete protection against threatened violations or complete redress for violations, this relief may be pleaded in bar of the suit. The court is empowered to provide whatever broad equitable and legal relief it may deem necessary to afford full protection to the aggrieved party; such relief may include restraining orders, interlocutory injunctions, permanent injunctions, mandatory injunctions, or such other judgments or decrees as may be necessary under the circumstances.

Another provision of section 4 would permit an aggrieved person to give written consent to any employee organization to bring a civil action on his behalf, or to intervene in such action. "Employee organizations" as used in this section includes any brotherhood, council, federation, organization, union, or professional association made up in whole or in part of Federal civilian employees, and which deals with departments, agencies, commissions, and independent agencies regarding employee matters.

A committee amendment provides that the Attorney General shall defend officers or persons who acted pursuant to an order, regulation, or directive, or who, in his opinion, did not willfully violate the provisions of the act.

SECTION 5

Section 5 establishes an independent Board on Employees' Rights, to provide employees with an alternative means of obtaining administrative relief from violations of the act, short of recourse to the judicial system.

Section 5(a) provides for a Board composed of three members, appointed by the President with the consent of the Senate. No member shall be an employee of the U.S. Government and no more than two members may be of the same political porty. The President shall designate one member as Chairman.

Section 5(b) defines the term of office for members of the Board, providing that one member of the initial Board shall serve for 5 years, one for 3 years, and one for 1 year from the date of enactment; any member appointed to fill a vacancy in one of these terms shall be appointed for the remainder of the term. Thereafter, each member shall be appointed for 5 years.

Section 5(c) establishes the compensation for Board members at $75 for each day spent working in the work of the Board, plus actual travel expenses and per diem in lieu of subsistence expenses when away from their usual places of residence.

Section 5(d) provides that two members of the Board shall constitute a quorum for the transaction of business.

Section 5(e) provides that the Board may appoint and fix the compensation of necessary employees, and make such expenditures necessary to carry out the functions of the Board.

Section 5(f) authorizes the Board to make necessary rules and regulations to carry out its functions.

Section 5(g) provides that the Board shall have the authority and duty to receive and investigate written complaints from or on behalf of any person claiming to be affected or aggrieved by any violation or threatened violation of this act, and to conduct a hearing on each such complaint. Moreover, within 10 days after the receipt of such a complaint, the Board must furnish notice of time, place, and nature of the hearing to all interested parties, and within 30 days after concluding the hearing, it must render its final decision regarding any complaint.

Section 5(h) provides that officers or representatives of any employee organization in any degree concerned with employment of the category in which the violation or threat occurs, shall be given an opportunity to participate in the hearing through submission of written data, views, or arguments. In the discretion of the Board they are to be afforded an opportunity for oral presentation. This section further provides that Government employees called upon by any party or by any Federal employee organization to participate in any phase of any administrative or judicial proceeding under this section shall be free to do so without incurring travel cost or loss in leave or pay. They shall be free from restraint, coercion, interference, intimidation, or reprisal in or because of their participation. Any periods of time spent by Government employees during such proceedings shall be held to be Federal employment for all purposes.

Section 5(i) applies to the Board hearings the provisions of the Administrative Procedure Act relating to notice and conduct of hearings insofar as consistent with the purpose of this section.

Section 5(j) requires the Board, if it determines after a hearing that this act has not been violated, to state such determination and notify all interested parties of the findings. This determination shall constitute a final decision of the Board for purposes of judicial review.

Section 5(k) specifies the action to be taken by the Board if, after a hearing, it determines that any violation of this act has been com-

mitted or threatened. In such case, the Board shall immediately issue and cause to be served on the offending officer or employee an order requiring him to cease and desist from the unlawful practice or act. The Board is to endeavor to eliminate the unlawful act or practice by informal methods of conference, conciliation, and persuasion.

Within its discretion, the Board may, in the case of a first offense, issue an official reprimand against the offending officer or employee, or order the employee suspended from his position without pay for a period not exceeding 15 days. In the case of a second or subsequent offense, the Board may order the offending officer or employee suspended without pay for a period not exceeding 30 days, or may order his removal from office.

Officers appointed by the President, by and with the advice and consent of the Senate, are specifically excluded from the application of these disciplinary measures; but the section provides that, in the case of a violation of this act by such individuals, the Board may transmit a report concerning such violation to the President and the Congress.

Section 5(l) provides for Board action when any officer of the Armed Forces of the United States or any person acting under his authority violates the act. In such event, the Board shall (1) submit a report to the President, the Congress, and to the Secretary of the military department concerned, (2) endeavor to eliminate any unlawful act or practice through informal methods of conference, conciliation, and persuasion, and (3) refer its determination and the record in the case to any person authorized to convene general courts-martial under section 822 (article 22) of title 10, United States Code. When this determination and report is received, the person designated shall immediately dispose of the matter under the provisions of chapter 47 of title 10 of the United States Code.

Section 5(m) provides that when any party disagrees with an order or final determination of the Board, he may institute a civil action for judicial review in the Federal district court for the district wherein the violation or threatened violation occurred, or in the District Court for the District of Columbia.

The court has jurisdiction to (1) affirm, modify, or set aside any determination or order made by the Board, or (2) require the Board to make any determination or order which it is authorized to make under section 5(k) but which it has refused to make. In considering the record as a whole, the court is to set aside any finding, conclusion, determination, or order of the Board unsupported by substantial evidence.

The type of review envisioned here is similar to that obtained under the Administrative Procedure Act in such cases but this section affords a somewhat enlarged scope for consideration of the case than is now generally accorded on appeal of employee cases. The court here has more discretion for action on its own initiative. To the extent that they are consistent with this section, the provisions for judicial review in title 5 of the United States Code would apply.

Section 5(n) provides for congressional review by directing the Board to submit to the Senate and to the House of Representatives an annual report which must include a statement concerning the nature of all complaints filed with it, the determinations and orders resulting

from hearings, and the names of all officers or employees against whom any penalties have been imposed under this section.

Section 5(o) provides an appropriation of $100,000 for the Board on Employee Rights.

SECTION 6

Section 6 provides that nothing in the act shall be construed to prohibit an officer of the Central Intelligence Agency or of the National Security Agency, under specific conditions, from requesting an applicant or employee to submit a personal financial statement of the type defined in subsection 1 (i) and (j) or to take any polygraph or psychological test designed to elicit the personal information protected under subsection 1(e) or 1(f).

In these agencies, such information may be acquired from the employee or applicant by such methods only if the Director of the agency or his designee makes a personal finding with regard to each individual that such test or information is required to protect the national security.

SECTION 7

Section 7 requires, in effect, that employees of the Central Intelligence Agency and the National Security Agency exhaust their administrative remedies before invoking the provisions of section 4 (the Board on Employee Rights) or section 5 (the Federal court action). An employee, his representative, or any organization acting in his behalf, must first submit a written complaint to the agency and afford it 120 days to prevent the threatened violation or to redress the actual violation. A proviso states that nothing in the act affects any existing legal authority of the Central Intelligence Agency under 50 U.S.C. 403(c) or of the National Security Agency under 50 U.S.C. 833 to terminate employment.

SECTION 8

Section 8 provides that nothing in the act shall be construed to affect in any way authority of the directors of the Central Intelligence Agency or the National Security Agency to protect or withhold information pursuant to statute or Executive order. In cases involving his employees, the personal certification by the Director of the agency that disclosure of any information is inconsistent with the provision of any statute or Executive order is to be conclusive and no such information shall be admissable in evidence in any civil action under section 4 or in any proceeding or civil action under section 5. Nor may such information be receivable in the record of any interrogation of an employee under section 1(k).

SECTION 9

Section 9 provides that the Federal Bureau of Investigation shall be excluded from the provisions of this act.

SECTION 10

Section 10 provides that nothing contained in sections 4 or 5 shall be construed to prevent the establishment of department and agency

grievance procedures to enforce this act. The section makes it clear that the existence of such procedures are not to preclude any applicant or employee from pursuing any other available remedies. However, if under the procedures established by an agency, the complainant has obtained complete protection against threatened violations, or complete redress for violations, such relief may be pleaded in bar in the U.S. district court or in proceedings before the Board on Employee Rights.

Furthermore, an employee may not seek his remedy through both the Board and the court. If he elects to pursue his remedies through the Board under section 5, for instance, he waives his right under section 4 to take his case directly to the district court.

SECTION 11

Section 11 is the standard severability clause.

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92D CONGRESS
1ST SESSION

S. 1438

IN THE SENATE OF THE UNITED STATES

APRIL 1, 1971

Mr. ERVIN (for himself, Mr. BAYH, Mr. BENTSEN, Mr. BIBLE, Mr. BROOKE, Mr. BURDICK, Mr. BYRD of Virginia, Mr. CHURCH, Mr. COOK, Mr. DOLE, Mr. DOMINICK, Mr. EAGLETON, Mr. FANNIN, Mr. FONG, Mr. GOLDWATER, Mr. GRAVEL, Mr. GURNEY, Mr. HANSEN, Mr. HATFIELD, Mr. HRUSKA, Mr. HUMPHREY, Mr. INOUYE, Mr. JORDAN of North Carolina, Mr. JORDAN of Idaho, Mr. MCGEE, Mr. MCINTYRE, Mr. MAGNUSON, Mr. MATHIAS, Mr. METCALF, Mr. MILLER, Mr. MONDALE, Mr. MONTOYA, Mr. MOSS, Mr. MUSKIE, Mr. NELSON, Mr. PACKWOOD, Mr. PEARSON, Mr. PERCY, Mr. PROUTY, Mr. PROXMIRE, Mr. RANDOLPH, Mr. SCOTT, Mr. SPARKMAN, Mr. SPONG, Mr. STEVENS, Mr. TAFT, Mr. TALMADGE, Mr. THURMOND, Mr. TOWER, Mr. TUNNEY, and Mr. WILLIAMS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To protect the civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. It shall be unlawful for any officer of any executive department or any executive agency of the United States Government, or for any person acting or purporting to act under his authority, to do any of the following things:

(a) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person seeking employment in the executive branch of the United States Government, to disclose his race, religion, or national origin, or the race, religion, or national origin of any of his forebears: *Provided, however,* That nothing contained in this subsection shall be construed to prohibit inquiry concerning the citizenship of any such employee or person if his citizenship is a statutory condition of his obtaining or retaining his employment: *Provided further,* That nothing contained in this subsection shall be construed to prohibit inquiry concerning the national origin or citizenship of any such employee or person or of his forebears, when such inquiry is deemed necessary or advisable to determine suitability for assignment to activities or undertakings related to the national security within the United States or to activities or undertakings of any nature outside the United States.

(b) To state or intimate, or to attempt to state or intimate, to any civilian employee of the United States serving in the department or agency that any notice will be taken of his attendance or lack of attendance at any assemblage, discussion, or lecture held or called by any officer of the executive branch of the United States Government, or by any person acting or purporting to act under his authority, or by any

outside parties or organizations to advise, instruct, or indoctrinate any civilian employee of the United States serving in the department or agency in respect to any matter or subject other than the performance of official duties to which he is or may be assigned in the department or agency, or the development of skills, knowledge, or abilities which qualify him for the performance of such duties: *Provided, however,* That nothing contained in this subsection shall be construed to prohibit taking notice of the participation of a civilian employee in the activities of any professional group or association.

(c) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to participate in any way in any activities or undertakings unless such activities or undertakings are related to the performance of official duties to which he is or may be assigned in the department or agency, or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties.

(d) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to make any report concerning any of his activities or undertakings unless such activities or undertakings are related to the performance of official duties to which he is or may be assigned in the

department or agency, or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties, or unless there is reason to believe that the civilian employee is engaged in outside activities or employment in conflict with his official duties.

(e) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person applying for employment as a civilian employee in the executive branch of the United States Government, to submit to any interrogation or examination or to take any psychological test which is designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters: *Provided, however*, That nothing contained in this subsection shall be construed to prevent a physician from eliciting such information or authorizing such tests in the diagnosis or treatment of any civilian employee or applicant where such physician deems such information necessary to enable him to determine whether or not such individual is suffering from mental illness: *Provided further, however*, That this determination shall be made in individual cases and not pursuant to general practice or regulation governing the examination of employees or

applicants according to grade, agency, or duties: *Provided further, however,* That nothing contained in this subsection shall be construed to prohibit an officer of the department or agency from advising any civilian employee or applicant of a specific charge of sexual misconduct made against that person, and affording him an opportunity to refute the charge.

(f) To require or request, or attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person applying for employment as a civilian employee in the executive branch of the United States Government, to take any polygraph test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

(g) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to support by personal endeavor or contribution of money or any other thing of value the nomination or the election of any person or group of persons to public office in the Government of the United States or of any State, district, Commonwealth, territory, or possession of the United States, or to attend any meeting held to promote or support the activities or undertakings of any political

party of the United States or of any State, district, Commonwealth, territory, or possession of the United States.

(h) To coerce or attempt to coerce any civilian employee of the United States serving in the department or agency to invest his earnings in bonds or other obligations or securities issued by the United States or any of its departments or agencies, or to make donations to any institution or cause of any kind: *Provided, however*, That nothing contained in this subsection shall be construed to prohibit any officer of any executive department or any executive agency of the United States Government, or any person acting or purporting to act under his authority, from calling meetings and taking any action appropriate to afford any civilian employee of the United States the opportunity voluntarily to invest his earnings in bonds or other obligations or securities issued by the United States or any of its departments or agencies, or voluntarily to make donations to any institution or cause.

(i) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to disclose any items of his property, income, or other assets, source of income, or liabilities, or his personal or domestic expenditures or those of any member of his family or household: *Provided, however*, That this subsection shall not apply to any civilian

employee who has authority to make any final determination with respect to the tax or other liability of any person, corporation, or other legal entity to the United States, or claims which require expenditure of moneys of the United States: *Provided further, however,* That nothing contained in this subsection shall prohibit the Department of the Treasury or any other executive department or agency of the United States Government from requiring any civilian employee of the United States to make such reports as may be necessary or appropriate for the determination of his liability for taxes, tariffs, custom duties, or other obligations imposed by law.

(j) To require or request, or to attempt to require or request, any civilian employee of the United States embraced within the terms of the proviso in subsection (i) to disclose any items of his property, income, or other assets, source of income, or liabilities, or his personal or domestic expenditures or those of any member of his family or household other than specific items tending to indicate a conflict of interest in respect to the performance of any of the official duties to which he is or may be assigned.

(k) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, who is under investigation for

misconduct, to submit to interrogation which could lead to disciplinary action without the presence of counsel or other person of his choice, if he so requests: *Provided, however,* That a civilian employee of the United States serving in the Central Intelligence Agency or the National Security Agency may be accompanied only by a person of his choice who serves in the agency in which the employee serves, or by counsel who has been approved by the agency for access to the information involved.

(l) To discharge, discipline, demote, deny promotion to, relocate, reassign, or otherwise discriminate in regard to any term or condition of employment of, any civilian employee of the United States serving in the department or agency, or to threaten to commit any of such acts, by reason of the refusal or failure of such employee to submit to or comply with any requirement, request, or action made unlawful by this Act, or by reason of the exercise by such civilian employee of any right granted or secured by this Act.

SEC. 2. It shall be unlawful for any officer of the United States Civil Service Commission, or for any person acting or purporting to act under his authority, to do any of the following things:

(a) To require or request, or to attempt to require or request, any executive department or any executive agency

of the United States Government, or any officer or employee serving in such department or agency, to violate any of the provisions of section 1 of this Act.

(b) To require or request, or to attempt to require or request, any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, or any person applying for employment in the executive branch of the United States Government, or any civilian employee of the United States serving in any department or agency of the United States Government, to submit to any interrogation or examination or to take any psychological test which is desgined to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters: *Provided, however,* That nothing contained in this subsection shall be construed to prevent a physician from eliciting such information or authorizing such tests in the diagnosis or treatment of any civilian employee or applicant where such physician deems such information necessary to enable him to determine whether or not such individual is suffering from mental illness: *Provided further, however,* That this determination shall be made in individual cases and not pursuant to general practice or regulation governing the exami-

nation of employees or applicants according to grade, agency, or duties: *Provided, further, however,* That nothing contained in this subsection shall be construed to prohibit an officer of the Civil Service Commission from advising any civilian employee or applicant on a specific charge of sexual misconduct made against that person, and affording him an opportunity to refute the charge.

(c) To require or request, or to attempt to require or request, any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, or any person applying for employment in the executive branch of the United States Government, or any civilian employee of the United States serving in any department or agency of the United States Goverment, to take any polygraph test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

SEC. 3. It shall be unlawful for any commissioned officer, as defined in section 101 of title 10, United States Code, or any member of the Armed Forces acting or purporting to act under his authority, to require or request, or to attempt to require or request, any civilian employee of the executive branch of the United States Government under his authority

or subject to his supervision to perform any of the acts or submit to any of the requirements made unlawful by section 1 of this Act.

SEC. 4. Whenever any officer of any executive department or any executive agency of the United States Government, or any person acting or purporting to act under his authority, or any commissioned officer as defined in section 101 of title 10, United States Code, or any member of the Armed Forces acting or purporting to act under his authority, violates or threatens to violate any of the provisions of section 1, 2, or 3 of this Act, any civilian employee of the United States serving in any department or agency of the United States Government, or any person applying for employment in the executive branch of the United States Government, or any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, affected or aggrieved by the violation or threatened violation, may bring a civil action in his own behalf or in behalf of himself and others similarly situated, against the offending officer or person in the United States district court for the district in which the violation occurs or is threatened, or the district in which the offending officer or person is found, or in the United States District Court for the District of Columbia, to prevent the threatened violation or to obtain redress against the

consequences of the violation. The Attorney General shall defend all officers or persons sued under this section who acted pursuant to an order, regulation, or directive, or who, in his opinion, did not willfully violate the provisions of this Act. Such United States district court shall have jurisdiction to try and determine such civil action irrespective of the actuality or amount of pecuniary injury done or threatened, and without regard to whether the aggrieved party shall have exhausted any administrative remedies that may be provided by law, and to issue such restraining order, interlocutory injunction, permanent injunction, or mandatory injunction, or enter such other judgment or decree as may be necessary or appropriate to prevent the threatened violation, or to afford the plaintiff and others similarly situated complete relief against the consequences of the violation. With the written consent of any person affected or aggrieved by a violation or threatened violation of section 1, 2, or 3 of this Act, any employee organization may bring such action on behalf of such person, or may intervene in such action. For the purposes of this section, employee organizations shall be construed to include any brotherhood, council, federation, organization, union, or professional association made up in whole or in part of civilian employees of the United States and which has as one of its purposes dealing with departments, agencies, commissions,

and independent agencies of the United States concerning the condition and terms of employment of such employees.

SEC. 5. (a) There is hereby established a Board on Employees' Rights (hereinafter referred to as the "Board"). The Board shall be composed of three members, appointed by the President, by and with the advice and consent of the Senate. The President shall designate one member as chairman. No more than two members of the Board may be of the same political party. No member of the Board shall be an officer or employee of the United States Government.

(b) The term of office of each member of the Board shall be five years, except that (1) of those members first appointed, one shall serve for five years, one for three years, and one for one year, respectively, from the date of enactment of this Act, and (2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(c) Members of the Board shall be compensated at the rate of $75 a day for each day spent in the work of the Board, and shall be paid actual travel expenses and per diem in lieu of subsistence expenses when away from their usual places of residence, as authorized by section 5703 of title 5, United States Code.

(d) Two members shall constitute a quorum for the transaction of business.

(e) The Board may appoint and fix the compensation of such officers, attorneys, and employees, and make such expenditures, as may be necessary to carry out its functions.

(f) The Board shall make such rules and regulations as shall be necessary and proper to carry out its functions.

(g) The Board shall have the authority and duty to receive and investigate written complaints from or on behalf of any person claiming to be affected or aggrieved by any violation or threatened violation of this Act and to conduct a hearing on each such complaint. Within ten days after the receipt of any such complaint, the Board shall furnish notice of the time, place, and nature of the hearing thereon to all interested parties. The Board shall render its final decision with respect to any complaint within thirty days after the conclusion of its hearing thereon.

(h) Officers or representatives of any Federal employee organization in any degree concerned with employment of the category in which any alleged violation of this Act occurred or is threatened shall be given an opportunity to participate in each hearing conducted under this section, through submission of written data, views, or arguments, and in the discretion of the Board, with opportunity for oral presentation. Government employees called upon by any

party or by any Federal employee organization to participate in any phase of any administrative or judicial proceeding under this section shall be free to do so without incurring travel cost or suffering loss in leave or pay; and all such employees shall be free from restraint, coercion, interference, intimidation, or reprisal in or because of their participation. Any periods of time spent by Government employees during such participation shall be held and considered to be Federal employment for all purposes.

(i) Insofar as consistent with the purposes of this section, the provisions of subchapter II of chapter 5 of title 5, United States Code, relating to the furnishing of notice and manner of conducting agency hearings, shall be applicable to hearings conducted by the Board under this section.

(j) If the Board shall determine after hearing that a violation of this Act has not occurred or is not threatened, the Board shall state its determination and notify all interested parties of such determination. Each such determination shall constitute a final decision of the Board for purposes of judicial review.

(k) If the Board shall determine that any violation of this Act has been committed or threatened by any civilian officer or employee of the United States, the Board shall immediately (1) issue and cause to be served on such officer or employee an order requiring such officer or employee

to cease and desist from the unlawful act or practice which constitutes a violation, (2) endeavor to eliminate any such unlawful act or practice by informal methods of conference, conciliation, and persuasion, and (3) may—

(A) (i) in the case of the first offense by any civilian officer or employee of the United States, other than any officer appointed by the President, by and with the advice and consent of the Senate, issue an official reprimand against such officer or employee or order the suspension without pay of such officer or employee from the position or office held by him for a period of not to exceed fifteen days, and (ii) in the case of a second or subsequent offense by any such officer or employee, order the suspension without pay of such officer or employee from the position or office held by him for a period of not to exceed thirty days or order the removal of such officer or employee from such position or office; and

(B) in the case of any offense by any officer appointed by the President, by and with the advice and consent of the Senate, transmit a report concerning such violation to the President and the Congress.

(l) If the Board shall determine that any violation of this Act has been committed or threatened by any officer of any of the Armed Forces of the United States, or any

person purporting to act under authority conferred by such officer, the Board shall (1) submit a report thereon to the President, the Congress, and the Secretary of the military department concerned, (2) endeavor to eliminate any unlawful act or practice which constitutes such a violation by informal methods of conference, conciliation, and persuasion, and (3) refer its determination and the record in the case to any person authorized to convene general courts-martial under section 822 (article 22) of title 10, United States Code. Thereupon such person shall take immediate steps to dispose of the matter under chapter 47 of title 10, United States Code (Uniform Code of Military Justice).

(m) Any party aggrieved by any final determination or order of the Board may institute, in the district court of the United States for the judicial district wherein the violation or threatened violation of this Act occurred, or in the United States District Court for the District of Columbia, a civil action for the review of such determination or order. In any such action, the court shall have jurisdiction to (1) affirm, modify, or set aside any determination or order made by the Board which is under review, or (2) require the Board to make any determination or order which it is authorized to make under subsection (k), but which it has refused to make. The reviewing court shall set aside any finding, conclusion, determination, or order of the Board as to which

complaint is made which is unsupported by substantial evidence on the record considered as a whole.

(n) The Board shall submit, not later than March 31 of each year, to the Senate and House of Representatives, respectively, a report on its activities under this section during the immediately preceding calendar year, including a statement concerning the nature of all complaints filed with it, its determinations and orders resulting from hearings thereon, and the names of all officers or employees of the United States with respect to whom any penalties have been imposed under this section.

(o) There are authorized to be appropriated sums necessary, not in excess of $100,000, to carry out the provisions of this section.

SEC. 6. Nothing contained in this Act shall be construed to prohibit an officer of the Central Intelligence Agency or of the National Security Agency from requesting any civilian employee or applicant to take a polygraph test, or to take a psychological test, designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters, or to provide a personal financial statement, if the Director of the Central Intelligence Agency or his designee or the Director of the National Security Agency or his designee makes a personal

finding with regard to each individual to be so tested or examined that such test or information is required to protect the national security.

SEC. 7. No civilian employee of the United States serving in the Central Intelligence Agency or the National Security Agency, and no individual or organization acting in behalf of such employee, shall be permitted to invoke the provisions of sections 4 and 5 without first submitting a written complaint to the agency concerned about the threatened or actual violation of this Act and affording such agency one hundred and twenty days from the date of such complaint to prevent the threatened violation or to redress the actual violation: *Provided, however,* That nothing in this Act shall be construed to affect any existing authority of the Director of Central Intelligence under section 403 (c), of title 50, United States Code, and any authorities available to the National Security Agency under section 833 of title 50, United States Code, to terminate the employment of any employee.

SEC. 8. Nothing in this Act shall be construed to affect in any way the authority of the Directors of the Central Intelligence Agency or the National Security Agency to protect or withhold information pursuant to statute or executive order. The personal certification by the Director of the agency that disclosure of any information is inconsistent with the provision of any statute or Executive order shall be conclusive and no such information shall be admissible in evi-

dence in any interrogation under section 1(k) or in any civil action under section 4 or in any proceeding or civil action under section 5.

SEC. 9. This Act shall not be applicable to the Federal Bureau of Investigation.

SEC. 10. Nothing contained in sections 4 and 5 shall be construed to prevent establishment of department and agency grievance procedures to enforce this Act, but the existence of such procedures shall not preclude any applicant or employee from pursuing the remedies established by this Act or any other remedies provided by law: *Provided, however,* That if under the procedures established, the employee or applicant has obtained complete protection against threatened violations or complete redress for violations, such action may be pleaded in bar in the United States district court or in proceedings before the Board on Employee Rights: *And provided further,* That if an employee elects to seek a remedy under either section 4 or section 5, he waives his right to proceed by an independent action under the remaining section.

SEC. 11. If any provision of this Act or the application of any provision to any person or circumstance shall be held invalid, the remainder of this Act or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected.

Approved For Release 2005/08/03 : CIA-RDP81-00818R000100050001-8

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

12 APR 1971

Mr. Wilfred H. Rommel
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Rommel:

Per our phone conversation Friday, enclosed is a letter we have recently received from Chairman Hanley regarding an early hearing on legislation to protect the invasion of privacy of Federal employees. I am also enclosing copies of all material we had thought of sending Chairman Hanley in response to this letter providing you have no objection. This is essentially the same material on which you acted favorably last year. We have been in touch with John Martiny and Dick Barton, of the Committee staff, and they seem to appreciate our problem.

As you are probably aware, in the last session the Ervin bill was considered by Representative Henderson's Subcommittee on Manpower and Civil Service and we found him, and I believe a majority of his Subcommittee, quite sympathetic. However, consideration of this type of legislation in this session has been assigned to the Hanley Subcommittee on Employee Benefits and we are not sure just how he and most of the members of his Subcommittee view the matter. We hope to take some soundings in the near future.

In view of our concern over this problem, we would be grateful for any advice or assistance you can give us.

Sincerely,

[redacted]

25X1

John M. Maury
Legislative Counsel

Enclosures

Approved For Release 2005/08/03 : CIA-RDP81-00818R000100050001-8

EXCERPT FROM JOURNAL
OFFICE OF LEGISLATIVE COUNSEL

Friday - 16 April 1971

25X1 1. [redacted] Talked to Wilfred Rommel, Assistant Director for Legislative Reference, OMB, who said he had no objection to our sending to Chairman Hanley, Subcommittee on Employee Benefits, House Post Office and Civil Service Committee, our proposed letter and attachments explaining our concern about proposed legislation to ensure the privacy of Federal employees. Rommel said he had no objection to our forwarding the material in question provided we omit therefrom a copy of a letter he had written last year on the subject in connection with the Ervin bill (S. 782). Rommel indicated OMB fully supported our position and said that he had mentioned the matter to Roger Jones of OMB and that we could deal with Victor Zafra regarding further developments.

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CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D. C. 20505

OFFICE OF THE DIRECTOR

16 April 1971

The Honorable James M. Hanley, Chairman
Subcommittee on Employees Benefits
Committee on Post Office and Civil Service
House of Representatives
Washington, D. C. 20515

My dear Mr. Chairman:

This is in response to your letter of 1 April 1971 regarding certain bills to be taken up by your Subcommittee dealing with invasion of privacy of Federal employees. Your letter notes that these bills are similar in many respects to Senator Ervin's bill (S. 782) which passed the Senate last year.

As you may be aware, certain provisions of that bill directly conflicted with the statutory responsibilities of the Director of Central Intelligence for protecting intelligence sources and methods, and data relating to the organization of the Central Intelligence Agency. Insofar as these and similar provisions are incorporated in bills under consideration by the Subcommittee, we would urge that this Agency and its employees be fully exempted from the application of such legislation.

For your convenience, I am enclosing herewith copies of pertinent correspondence relating to the Ervin bill which I believe explain in part the reasons for our concern about the provisions in question.

My Legislative Counsel, Mr. John M. Maury, has been in touch with Messrs. Martiny and Barton, of the Committee staff, and either he or I will be happy to meet with you at your convenience to discuss the matter further.

Sincerely,

Richard Helms
Director

Enclosures

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SENDER WILL CHECK CLASSIFICATION TOP AND BOTTOM

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OFFICIAL ROUTING SLIP

TO	NAME AND ADDRESS	DATE	INITIALS
1	The Director	3 MAY 1971	
2	Mr. Maury OLC 71-0305		
3			
4			
5			
6			

✓	ACTION		DIRECT REPLY	✓	PREPARE REPLY
	APPROVAL		DISPATCH		RECOMMENDATION
	COMMENT		FILE		RETURN
	CONCURRENCE		INFORMATION		SIGNATURE

Remarks:

FOLD HERE TO RETURN TO SENDER

FROM: NAME, ADDRESS AND PHONE NO.	DATE

UNCLASSIFIED | CONFIDENTIAL | SECRET

FORM NO. 1-67 237 Use previous editions (40)

JAMES M. HANLEY
35TH DISTRICT, NEW YORK

WASHINGTON OFFICE:
109 CANNON BUILDING
CODE 202: 225-3701

SYRACUSE OFFICE:
370 FEDERAL BUILDING
13202
CODE 315: 473-5657

Congress of the United States
House of Representatives
Washington, D.C. 20515

COMMITTEES:
POST OFFICE AND CIVIL SERVICE
CHAIRMAN: SUBCOMMITTEE ON EMPLOYEE BENEFITS

BANKING AND CURRENCY
SUBCOMMITTEES:
DOMESTIC FINANCE
INTERNATIONAL FINANCE
CONSUMER AFFAIRS

April 23, 1971

Hon. Richard Helms
Director
Central Intelligence Agency
Washington, D. C., 20505

Dear Mr. Helms:

In acknowledgment of your letter of April 16 regarding the forthcoming activity related to invasion of privacy of Federal employees, as you suggested, I will be delighted to meet with you at a time mutually convenient. My secretary will be in contact with your office in this regard.

Looking forward to seeing you, and with every best wish, I remain

Sincerely,

Jim Hanley

James M. Hanley
Member of Congress

JMH:njb

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27 APR 1971

Mr. Wilfred H. Rommel
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Rommel:

As indicated in the attached proposed letter to Senator Ervin, we have continued our assessment of the impact of his bill, S. 1438 (S. 782 in the 91st Congress), and feel that we should reaffirm our original position that the Central Intelligence Agency and its employees should be totally exempted from it.

I would appreciate your advice as to whether there is any objection to the submission of the attached letter.

Sincerely,

STAT [redacted]

John M. Maury
Legislative Counsel

Enclosure

Distribution:
Orig & 1 - Adse
1 - OGC
1 - DD/S
1 - OP

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM: Legislative Counsel

EXTENSION

NO.

DATE 12 May 1971

STAT

TO: (Officer designation, room number, and building)	DATE RECEIVED	DATE FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1. Ex/Dir				The attached statement by Senator Ervin before the Hanley Subcommittee regurgitates the old allegations and gives us a pretty good idea of the kind of misconceptions that prevail on the Hill. I think we should be fully prepared to refute each of them, at least so far as CIA is concerned.
2.				
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STAT

[redacted]
John M. Maury
Legislative Counsel

cc: OGC
DDS
D/Security

92D CONGRESS
1ST SESSION

S. 1438

A BILL

To protect the civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy.

By Mr. ERVIN, Mr. BAYH, Mr. BENTSEN, Mr. BIBLE, Mr. BROOKE, Mr. BURDICK, Mr. BYRD of Virginia, Mr. CHURCH, Mr. COOK, Mr. DOLE, Mr. DOMINICK, Mr. EAGLETON, Mr. FANNIN, Mr. FONG, Mr. GOLDWATER, Mr. GRAVEL, Mr. GURNEY, Mr. HANSEN, Mr. HATFIELD, Mr. HRUSKA, Mr. HUMPHREY, Mr. INOUYE, Mr. JORDAN of North Carolina, Mr. JORDAN of Idaho, Mr. MCGEE, Mr. MCINTYRE, Mr. MAGNUSON, Mr. MATHIAS, Mr. METCALF, Mr. MILLER, Mr. MONDALE, Mr. MONTOYA, Mr. MOSS, Mr. MUSKIE, Mr. NELSON, Mr. PACKWOOD, Mr. PEARSON, Mr. PERCY, Mr. PROUTY, Mr. PROXMIRE, Mr. RANDOLPH, Mr. SCOTT, Mr. SPARKMAN, Mr. SPONG, Mr. STEVENS, Mr. TAFT, Mr. TALMADGE, Mr. THURMOND, Mr. TOWER, Mr. TUNNEY, and Mr. WILLIAMS

APRIL 1, 1971
Read twice and referred to the Committee on the Judiciary

Approved For Release 2005/08/03 : CIA-RDP81-00818R000100050001-8

wage-price policy along the lines set forth countless times by the Joint Economic Committee is an ominous failure of policy responsibility by the administration.

President Nixon recently expressed dismay over the fact that America's share of world steel production dropped from 50 to 20 percent in the last two decades. I urge him to ponder the fact that the steel industry has traditionally reacted to reduced demand growth by raising prices—exactly the opposite of traditional economic conduct. Higher prices force a lower rate of operation which generally is accompanied by a lower increase in productivity. Such price increases serve to generate a vicious circle of stagnancy which is further abetted by a traditionally weak modernization policy in the steel industry. No wonder that foreign competition is cutting into their market heavily. How can the U.S. steel industry compete if it falls behind in productivity?

What makes it worse is the possibility that the steel industry will try to perpetrate another increase later this summer after the wage negotiations. The industry has already tried to justify the present increase on the basis of past wage rises.

Mr. President, unless President Nixon immediately adopts stronger policies, and specifically an effective wage price program, this country will suffer an intensification of inflation even with the 6-percent unemployment that will prevail for most or all of this year.

I ask unanimous consent that the New York Times editorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

CONFUSION IN STEEL

The vapidity of the Administration's program for curbing the wage-price spiral has never been more dismayingly evident than in its approach to the steel industry. Even now, with the dollar in acute trouble in world money markets and with the wholesale price index signaling another upsurge in domestic inflation, the White House has thrown a mantle of total confusion over developments in this most basic of American industries.

Last January, when Bethlehem Steel announced a 12 per cent increase in structural steel prices, President Nixon made plain his extreme displeasure and hinted that he might retaliate by letting more foreign steel into this country. Action by United States Steel to trim the increase to 6.8 per cent ended that confrontation.

Now United States Steel has taken the lead in a price rise averaging 6.25 per cent on the types of steel used to make automobiles, appliances and other consumer goods. This time the White House says it is "disappointed" but emphasizes that it doesn't plan to seek a rollback. The Council of Economic Advisers shrugs off the increase as merely an extension of the round that began with higher prices for construction steel. A spokesman says the council's real concern is over the danger of another jump in steel prices after the industry's crucial wage negotiations this summer.

And what is the Administration's contribution to a moderate settlement in those talks? More confusion. In mid-April, after holding aloof from pattern-setting negotiations in the can industry, the President's economic advisers issued an "inflation alert" in which they warned that extension of the can settlement to steel would undermine that industry's ability to compete with foreign steelmakers and sharply cut job opportunities in domestic mills.

In a news conference last weekened the President underscored this warning by declaring that America's share of world steel production had dropped from 50 per cent to 20 per cent in the last two decades and that the industry would lose its ability to compete if the forthcoming labor agreement did not reflect "competitive realities."

The very next day reports came out of Washington that some of the President's closest advisers were resigned to a steel settlement as high as the one in the can industry. "Anyone who thinks the settlement in steel will be less than the can settlement is out of his mind," was the crisp summary one high official gave of the White House attitude.

Union leaders, already under intense rank-and-file pressure, are bound to take the new price increases in steel and the absence of any inclination by the Administration to institute a comprehensive incomes policy as a green light for wage increases far in excess of productivity. The inevitable result will be more inflation, a further weakening of the dollar's international standing and more trouble for American steelmakers and steelworkers in withstanding overseas competition.

THE NEED TO APPOINT FEMALE PAGES

Mr. BAYH. Mr. President, I wish to express my wholehearted support for the resolution expressing the sense of the Senate that girls should be allowed to serve as Senate pages. We discussed a similar issue last year, during the debate on the proposed equal rights amendment. While the measure ultimately was defeated by the addition of extraneous amendments, the quality of debate was high. I hope that this year, as before, the Senate will pay serious attention to the need to insure equal rights and opportunities for both men and women.

Today, the question of equal rights for men and women is again before us. The resolution should not require prolonged debate. We are not being asked to determine constitutional law. To me the issue is simple: Admission of female pages would reinforce the desire of this Chamber to be as representative as possible—to discard old myths when they have been proven false and discriminatory.

During a time of citizen concern over the broad questions of civil, legal, and human rights this body must continue to demonstrate good faith in support of these rights. And there is no good reason not to do so by admitting female pages.

Of course, some are concerned that page duties are physically too strenuous or that the hours are irregular. While these concerns are sincerely voiced, they are not decisive. For the fact is that girls have been employed during equally irregular hours in the Senate mail rooms performing tasks which are physically more demanding than those of pages. Clear precedent has already been established by this body.

Finally, page duty is an education as well as a job opportunity—and equal educational opportunity has long been a theme of congressional legislation.

We are all aware that the work of a Senate page is hard, exhausting, and sometimes tedious. But we must not forget that it is also one of the finest opportunities for a student to gain a practical and intimate understanding of representative Government. All of us at some time or another have pleaded with a group of young people to be more realistic or pragmatic in the demands they place upon Congress. I have often wished that I could share with these young people—both men and women—a firsthand understanding of Congress and its intricacies. Appointing a Senate page is one way to do so.

I believe we should adopt this resolution and expand the privilege of serving as a page to women as well as men. For they are all citizens and future opinion makers.

STATEMENT BY SENATOR ERVIN BEFORE HOUSE SUBCOMMITTEE ON EMPLOYEE PRIVACY AND S. 1438

Mr. ERVIN. Mr. President, today I testified before the House Subcommittee on Employee Benefits which is holding hearings on employee privacy legislation such as S. 1438, which I introduced in the Senate. The bill was passed by overwhelming votes of the Senate in the last two Congresses. It is now cosponsored by 51 Senators.

I told the House subcommittee that the privacy and constitutional rights of employees and applicants for employment in the executive branch require the protection of a law such as S. 1438 would provide.

There has been a serious need for such a law for many years. With the recent growth of the Federal Government and the unprecedented extension of its powers, its attitudes toward its employees will affect the lives and privacy of more Americans than ever before in our history.

There are some outrageous invasions of individual privacy and violations of rights which take place today. Many of them are sanctioned by Government and powerful private economic interests.

The individual, even a Member of Congress, has few enough chances to challenge or halt many of these. I believe my privacy bill offers every Member of Congress an immediate chance to halt some of the privacy invasions. Fifty-one Members of the Senate have cosponsored the bill as S. 1438 this year. In the last Congress, the Senate passed it by unanimous consent. In the 90th Congress, the Senate passed it with a 79-to-4 vote, and, counting absentees, with the total approval of 90 Members.

The bipartisan support for the bill is illustrated in its continuous sponsorship by Democrats and Republicans of all persuasions. In policy statements during the last presidential campaign, the candidates of both major political parties strongly supported new protections for the constitutional rights of federal employees and guarantees against un-

warranted invasions of their personal privacy. The Democratic candidate wisely promised legislation based on the findings of the Senate Constitutional Rights Subcommittee and other congressional committees.

Platforms of both major parties acknowledged the privacy problem. In its platform, the Republican Party stated:

"The increasing government intrusion into the privacy of its employees and of citizens in general is intolerable. All such snooping, meddling and pressure by the federal government on its employees and other citizens will be stopped and such employees, whether or not union members, will be provided a prompt and fair method of settling their grievances.

Time is running out for fulfillment of these campaign promises. I would like to see this administration remove the blinders it inherited, and give this employee privacy bill top priority on its list of "must-have" laws.

I first introduced a similar bill in 1966 when it became apparent that executive branch politics were working to deprive people who worked for government of basic rights which belonged to them under the first amendment to the Constitution.

They were being compelled to reveal things about themselves which under the merit system, the Government had no business asking. They were told to fill in computer-punched cards with their race, and national origin, added to their names and social security numbers.

On pain of losing their jobs, employees were told at all grade levels to respond to broad inquiries about the way they handled their personal and family finances, and how their relatives spent their own money.

On pain of not getting a job, or a promotion, or a clearance, people were being subjected to extensive questions about their religious beliefs and practices, such as whether they believed in God, or the second coming of Christ, or how often they read the Bible.

They were submitted to questions about personal family relationships, such as whether or not they loved their mother or hated their father, and whether or not they enjoyed "sweet and peaceful family relationships."

They were solicited for responses to questions about their sexual attitudes and conduct, such as whether or not they "petted," how often they had intercourse and with whom, whether or not they took birth control pills, whether they dreamed about sex matters, and many other intimate details which were none of the business of Government to demand from its employees and applicants.

I know of nothing in the Constitution which authorizes Federal officials to use economic sanctions to make such inquiries of citizens, regardless of the stated purpose. Such inquiries cropped up time and time again with different justifications from officials. National security, emotional stability, mental health, ethical and moral conduct were among the reasons given. I believe a study of the reasons for the first amendment and fifth amendment and of the Supreme Court decisions on them will demonstrate that such questions are unauthorized for the purpose and that they have no substantial relevance to the purpose of Government. Yet such outrageous inquiries were and are put to people by questionnaires, interviews, and lie-detector machines.

We found that the Government was pursuing some other inquiries and investigations which were none of its business. In the interest of furthering administration equal employment goals, its beautification program and other social, political, and economic plans, employees were told in regulations, and verbally, to go out and use their own time to lobby for open housing legislation and municipal ordinances on civil rights, to work in ghettos, paint fences, buy grass seed, support the Urban League and the NAACP, and to engage in many other suggested community activities.

They were then told to report back to their supervisors what they had done. When one large group of employees asked what would happen if they did not do such things, they were told they would be considered uncooperative and that their personnel files would reflect their attitudes.

Under our Constitution, it seemed to me that a man can certainly decide for himself whether he wants to be politically or socially active in his community. If he wants to be silent and do nothing at all, that is his business. There is nothing in the Constitution saying that just because he works for Government he should have to report to his supervisor that he prefers to go fishing on Saturday instead of demonstrating for a Government-supported cause.

Yet, apparently, this is the word passed from the White House by its civil rights Executive order to the Civil Service Commission and down to the department and agency officials all over the country.

Apparently, too, things have not changed all that much. The Subcommittee on Constitutional Rights received complaints that some employees were "urged" to take part in Veterans Day activities to show their support for the administration.

A recent press release issued by the Civil Service Commission—and I have it here—states that "a new program to facilitate voluntary service by Federal employees has been launched by the Civil Service Commission Chairman in support of the President's program to strengthen voluntary activity in the United States." It further stated:

Based on experience in a model developed in the Washington area by the Civil Service Commission, Chairman Hampton has urged Federal Executive Boards and Federal Executive Associations throughout the country to develop similar methods for matching the volunteer needs in the community with the skills of Federal employees willing to volunteer their services. He suggested that appropriate Federal officials in local communities contact local Health and Welfare Councils and explore with them the needs for volunteer service and then get the word to Federal employees in the area about the services needed. He further suggested the establishment of a separate office manned by volunteers which would list the volunteer openings and match them against the Federal employees who indicated a willingness to serve.

The experimental project in the Washington area has been highly successful. In a period of 3 months, approximately 300 Federal employees accepted volunteer assignments from 109 different voluntary agencies. These were in urban service centers, community schools, hospitals, and playgrounds and included, among other things, tutoring, teaching arts and drama, community action, services to handicapped, sports and recreation, and services to children. The Federal employees came from 60 different Federal agencies.

Expanding this idea to other communities will give the charitable agencies much needed voluntary manpower, Chairman Hampton said. Federal Executive Boards are located in 25 large metropolitan areas. . . . Extension of the Washington model to other communities was carried out in cooperation with the Office of Voluntary Action, the staff arm of the Cabinet Committee on Voluntary Action established by President Nixon last May.

It is too soon to tell how this new Commission program will work out, but it seems they would have learned the lessons of the past. They have also failed to recognize the truth I learned in the infantry from World War I: that a request from a superior is equivalent to a command.

One example of the implementation of such a program came to my attention through Mr. Griner of the American Federation of Government Employees. Defense Supply Agency employees at Rough and Ready Island in California were given a "Community Relations Questionnaire" which asked whether the employee is a member of service groups, such as Kiwanis, Rotary, and others; whether he is a member of educational, civil, or similar community committees, such as chambers of commerce, and others; whether he is a member of professional associations or organizations and which ones; and whether he has membership in local PTA's and churches. I concluded from this that the agency had some "Rough and Ready" policies.

The questionnaire states at the bottom that it is "required to be returned to your supervisor not later than the close of business December 3, 1970."

I sent a letter inquiring about any departmental directives authorizing such questionnaires and received a reply from the staff director of civilian personnel telling the subcommittee that "the participation of Defense Supply Agency employees, as individuals, in community activities is recognized as an important factor in sustaining mutual acceptance, respect, cooperation and an appreciation by the agency personnel and community affected by their operations." He said that the questionnaire resulted from a "well intentioned but imperfectly communicated desire by the public affairs officer to gage the approximate extent of community activities based upon information voluntarily provided by employees." He further stated:

The questionnaire was distributed with verbal instructions that its completion was voluntary on the part of the employee, whereas the questionnaire itself stated it was required to be turned in.

It seems that in a recent communication to the Secretary of Defense, General Hedlund had identified as a management challenge "learning to recognize and understand growing individualism and activism in today's society as these relate to personnel management." The General's word had become an order.

When he heard these complaints, this personnel officer attempted to perform his duty. He issued a directive telling supervisors to be careful about their expression of interest in non-work matters and to encourage their staffs always "to be concerned with preventing such misunderstandings by limiting employee inquiries, written or oral, to matters clearly connected with the employee's work."

It is hard for me to see how personnel officers and supervisors can follow this rule of reason when their political superiors have made it clear they are to do just the opposite. There is no way to avoid such wholesale inquiries into the employee's private life as long as the Government makes clear its desire that he go out and support programs and policies which it endorses.

We also found that employees were ordered to attend meetings called or sponsored by their agencies or supervisors in order to guide their thinking on sociological and political issues which had nothing to do with their jobs.

With one complaint of such attempted indoctrination of employees at a Federal installation, a civil servant enclosed a memorandum taken from a bulletin board stating the time, place, and date of a lecture by a sociology professor on the subject of the importance of racial integration. Attendance was to be voluntary but the notice stated that a record would be made of those attending or not attending.

To my mind, such programs constituted official intimidation of citizens to conform their thinking on public issues to those of the administration.

I found nothing in the Constitution which authorized officials of the employee's department to require attendance at such brain-washing sessions held under the auspices of the Government. Nor were they authorized under the Constitution to take note of attendance at such Government-sponsored or Government-endorsed meetings and lectures.

Here again, there is no sign that things have changed very much in the Federal Service. For example, our subcommittee has received many employee complaints about the sensitivity-sessions they are required to attend to change their "cultural attitudes and behavior" on racial issues, equal rights for women and the role of minority groups. I am told this is being done under the equal employment order issued by President Johnson to promote civil rights in Government. In these out-of-town meetings run by psychologists and other behavioral scientists, people are subjected to emotionally charged situations deliberately staged to manipulate and provoke human emotions in sensitive-matters of the intellect and personality.

The reports received from employees and other Members of Congress about the way HEW programs were operating were so disturbing that I asked Secretary Richardson to investigate the matter and suspend the sessions pending his report. I also asked him to answer some simple questions so I and other Members could advise employees of their rights, since these people could get no answers from their supervisors.

That was on March 19, and to date, the subcommittee has received no reply from the Department.

In relaying these complaints, I also informed the Secretary:

It has become clear from the complaints by responsible employees, from reports by acknowledgeable experts in the fields of labor-management relations and from psychiatrists, psychologists and specialists in human relations, as well as from my own studies of this matter, that this program goes far beyond the needs of personnel training in any department or agency of government.

On the basis of my own investigation, I am convinced that the scope of this program and the techniques used in some of the sessions amount to economic coercion of the individual to submit to official attempts to control his thoughts and emotions in ways completely uncalled for in the employment relationship. However useful such techniques may be for treating psychiatric problems in private practice on a voluntary basis, it is not the business of government to inflict them on its employees.

The Subcommittee study has amply demonstrated the need for more governmental recognition of the constitutional rights which employees possess as citizens. No one, therefore, can fault a management training program to teach better understanding of management duties and to develop the ability to deal with the human relations aspect of a job. However, there are well-established methods of instilling and teaching the principles and personnel techniques involved in such duties. It is tyranny over the mind of the grossest sort to subject employees to a probe of their psyches, to provoke or even require disclosure of their intimate attitudes and beliefs.

Even the soundest professional supporters of such techniques have emphasized the need for voluntary, enthusiastic participation by the individual. From the reports received by the Subcommittee, it appears that there is not even a gesture toward voluntarism in the government programs. Rather, employees have been ordered to leave their homes and families at some hardship and live for a period in seclusion with fellow employees and supervisors, while being subject to psychological encounter sessions. People who protest have been given the option of refusing to disobey an order or of requesting an exemption on psychiatric or emotional grounds.

An Agriculture employee writes:

During our two and a half day session on Civil Rights, we were subjected to hearing lectures, speeches, stories, songs or what have you which in many instances were full of foul language even to the point of being vulgar (morally crude, offensive, earthy, profane) and obscene (disgusting to the senses, repulsive).

Other employees of that Department wrote about being required to watch films and to listen to tape recordings of speeches by Dick Gregory and other civil rights activists stressing how whites were hated and what these people were going to do about it. Clearly, such sessions intrude on First Amendment freedoms, and just as clearly, as these letters demonstrate, they are counterproductive for the administration's purposes.

The subcommittee has received numerous complaints from employees of other departments describing encounter sessions.

There are many other ways Government attempts to intimidate the private thoughts and behavior of people who work for it.

One of the most serious, however, is the economic coercion of those citizens to invest their money in U.S. savings bonds, or to donate to charitable causes. Congress has received many reports of blacklisting, reprisals, threats of loss of security clearances, and other official adverse actions because employees wanted to make their own decisions about how they donated or invested their earnings. It is a long, unpleasant, and often unproductive route for employees to appeal such actions or for Congress to investigate them. The many cases received by the subcommittee proved the need for a plain statement in the law that such coercion of a person's freedom of thought and action is prohibited.

ENFORCEMENT MACHINERY

On the basis of complaints on these and many other privacy invasions, it was clear to me and the cosponsors of this proposal that the law fails fully to protect the rights of the citizen who work for Government. It is sometimes impossible for him to challenge unconstitutional governmental programs or unconstitutional demands on him for information. He is without the legal statutory right to have counsel or someone else with him if he wishes in sessions which may result in disciplinary actions. He is denied or inhibited from pursuing any administrative remedies. He is refused access to the courts under laws and judicial decisions which would leave such programs to the discretion of the executive branch.

So in addition to simple prohibitions on unconstitutional actions of Government, my bill also establishes certain enforcement machinery which includes a right to counsel in certain cases, a board on employee rights where an applicant or employee may obtain a hearing and action on complaints arising under this act; and it affords access to the Federal District Court in cases arising under this act.

This bill to protect employee privacy has had widespread public and editorial support throughout the Nation as well as support from employee unions and organizations. In fact, with few exceptions, the only people who seem against it are those whose power would be limited by it.

Despite the widespread public and congressional support, one would have thought that with this bill I sought to introduce the bubonic plague into the Federal service rather than the rule of law. Officials in the previous administration fought this simple proposal with every resource at its command. They conjured up incredible legal ghosts in an attempt to influence the uninformed or

intimidate the faint of heart. However much they vowed to alter administrative machinery or to change governmental attitudes, it was clear that they had closed their eyes and their minds to the real need for laws on the books to protect the first amendment rights of citizens.

I do not think anyone should be misled about the purpose of this bill. To hear some describe it, all of the ills which beset the Federal service will be cured by passage of the bill. Others have seized on it as the embodiment of all of the forces of Beelzebub.

It should be understood that my proposal does no more and no less than what it states in plain English, so that every political executive in the Federal Government will have notice of the constitutional limits of his power in certain specified matters. It leaves untouched the vast investigatory apparatus of the Government. It leaves untouched the many conflict-of-interest laws, the ethical conduct codes and all the other laws under which employees are investigated by the Civil Service Commission, the FBI, and by their departments, for determining their fitness for duty or their violation of the criminal laws or the violation of orders relating to their jobs.

During the 5 years we have worked with the bill in the Constitutional Rights Subcommittee, it has been subjected to careful refinement and amendment to meet any legitimate objections. These are listed in the Judiciary Committee report of the 91st Congress, No. 91-873.

In the version passed by the Senate last year and which I have reintroduced, the Federal Bureau of Investigation is exempted and there are certain carefully drawn exceptions for the two security agencies, the Central Intelligence Agency and the National Security Agency. These exceptions in S. 782 of last year were in addition to those contained in the bill which first passed the Senate in 1967 as S. 1035.

My sponsorship of this legislation does not imply a belief that there should be a law on everything the executive branch should not do to its employees. There are many things done in the name of worthy purposes which are foolish, tyrannical, repressive, or self-defeating. But they do not necessarily violate the Constitution. Nor can Congress legislate against all manner of fools and their follies.

It can and should legislate to protect the freedom of the mind which is guaranteed all citizens under the first amendment whether they work for Government or not.

Individuals should know that they have a legal remedy when economic coercion is used to compel them to speak, think, or act against their will in favor of Government causes, or about personal matters which are none of the business of Government.

The need for such a remedy is underlined by the directives I have seen recently prohibiting employees from contacting personnel offices and supervisers who could take action on problems.

It is underlined by the written and verbal "gag rules" ordering employees not to tell Congress about their problems and, in some cases, even not to contact Members of Congress without reporting it to their supervisors.

Nor can employee unions and organization completely protect against such complaints, although within their limited resources, they have been increasingly active in protecting privacy. In this connection I am reminded of the union concern in the last Congress when a Pentagon personnel official warned unions against going to the press or to Congress with their grievances. Furthermore, not all employees and applicants are members of unions nor should they be required to join to assure their first amendment right to privacy.

Nor does the remedy rest with the Civil Service Commission. Their attitude toward privacy is revealed by their response to my inquiry about piped-in music. After receiving complaints about this subject, I asked the Commission what grievance channels were available to employees who resented having to work by piped-in music, some of it raucous hillbilly or jazz. Without expressing any opinion on the matter, I asked whether any rules existed whereby an agency could involve its employees in the decision about whether to use it, and in the choice of music. The Commission sent me a long letter arguing that the Supreme Court has held there is no constitutional right to be free of music on buses and that people had to get used to the sounds of daily living, whether they are in the city or the country.

Undreamed of privacy invasions are being made possible or furthered by great computer systems, by the new technology with all its sophisticated devices and instruments. Some of these raise constitutional issues. Some do not.

The time has come, I believe, for Congress to consider establishing a tribunal independent of the Civil Service Commission, to hear and judge the many complaints of violation of privacy rights of employees.

The Civil Service Commission was created to be the handmaiden of the Chief Executive and to pursue his mandates in the general management of the Federal service. Its staff have an unbelievable burden to carry to assure the responsible and efficient operation of the Federal service. Too often, any constitutional rights employees possess have been administered and implemented by the Commission, and the energy and zeal behind them has come from the good will and good faith of Commission members dependent on staffing, time and resources. The impetus for their enforcement often stems from political pressure with help from the courts.

We live in a government of laws, not of men. The constitutional rights of citizens even those who work for the Federal Government, should depend on laws, not Executive orders; on the application of due process of law, not on the grace of the Civil Service Commission.

This is not a new idea, but one which may have new urgency with the new employee problems. I think it bears exploration.

But I do not see the establishment of such a body or any other new laws as alternatives to the passage of the employee privacy legislation before the House and the Senate.

I therefore urge the immediate enactment of that legislation, unencumbered, undiluted, and in the form passed by the Senate in the last Congress and as reflected in S. 1438 of this Congress.

WELFARE REFORM

Mr. PACKWOOD. Mr. President, welfare reform has been listed as this administration's No. 1 legislative goal. Although we here in the Senate disagree among ourselves on the shape of reforms that are needed, I think we too are unanimous in recognizing that some type of welfare reform is desperately and urgently needed.

Before any constructive proposals can be put forth, we first must examine the nature and source of the problems, both from the point of view of the welfare recipient, the taxpayer, and the welfare administrator. Additionally, we must carefully consider the varying needs and standards from one State or area to another. New York's needs and solutions will not be identical to Oregon's, and California's will probably differ from Maine's. It seems to me that geographical and economic diversity must be kept closely in mind as we begin to examine the specifics of the various welfare reform proposals before us.

The Oregon House of Representatives has recently completed a task force study on welfare in Oregon and has issued a very thoughtful and constructive report. In view of the relevance of this subject, I ask unanimous consent that the task force report be printed in the RECORD. I commend it to Senators for their consideration.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

HOUSE TASK FORCE ON WELFARE 1971 REPORT TO THE 56TH LEGISLATIVE ASSEMBLY

MEMBERS OF THE HOUSE TASK FORCE ON WELFARE

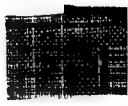
Representative Anthony Meeker, Chairman.
Representative George F. Cole.
Representative Leigh Johnson.
Representative Richard Magruder.
Representative Gordon Macpherson.
Charles McKeen, Administrative Assistant.
Margo Blue, Secretary to the Committee.
Interns: Gail Jeffries, John Houser, Allen Shibuya, Rush Yeates.

INTRODUCTION

Welfare programs were instituted in the United States as an emergency measure in the 1930's to aid those who were "ill-housed, ill-clothed, and ill fed" as a result of massive unemployment and a decaying economy. Today, nearly 40 years after its inception, public assistance has strayed far from its original purpose. It has become a mammoth, uncoordinated bureaucracy providing permanent income rather than *emergency* income for people in need.

In 1970, there were 72,443 applications for public assistance in Oregon compared with 43,543 two years earlier. In 1970, welfare assistance was given to 50,331, or 69.47 percent of those applying compared with 26,543, or 61.04 percent, in 1968. *In two years the number accepted for public welfare in Oregon nearly doubled.*

In the Aid-to-Dependent-Children category, the increase was even more dramatic.



Approved For Release 2005/08/03 : CIA-RDP81-00818R000100050001-8

CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D. C. 20505

OFFICE OF THE DIRECTOR

21 May 1971

The Honorable Sam J. Ervin, Jr.
Chairman, Subcommittee on
Constitutional Rights
Committee on the Judiciary
United States Senate
Washington, D. C. 20510

My dear Mr. Chairman:

I have noted that on 1 April 1971 you introduced S. 1438, a bill "to protect the civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy."

When an identical bill, S. 782, was under consideration in the last Congress, you were good enough to meet with Larry Houston and Jack Maury, of my staff, to hear our explanation of some of the problems which the bill might create for us. You also gave me an opportunity to appear before your Subcommittee for the same purpose. I much appreciate your courtesy on these occasions, and I am grateful for the efforts of your Subcommittee staff to work out some changes in the original version of S. 782 designed to solve our problems.

Despite these changes our recent examination of this legislation has served only to confirm our judgment that it still falls considerably short of meeting the Agency's basic requirements. I am therefore convinced of the necessity for a complete exemption for this Agency, and I trust you will favorably consider my request for such an exemption. Larry Houston and Jack Maury are of course available at your convenience if you think further discussions would be useful.

Sincerely,

Richard Helms

Richard Helms
Director

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM: Legislative Counsel

EXTENSION: ☐

NO.

DATE: 17 May 1971 STAT

TO: (Officer designation, room number, and building)	DATE RECEIVED	DATE FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1. Ex/Dir Director	21 MAY 1971			As you will see from the attached excerpt from the 11 May Congressional Record, Senator Ervin is vigorously plugging his familiar line. Since he refers to certain amendments designed to accommodate the Agency, it may be useful to remind him in writing that these amendments fall considerably short of meeting our requirements. Otherwise, when the bill comes up in the Senate and we renew our request for a complete exemption, he may accuse us of backtracking on an earlier understanding. STAT
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[redacted]

John M. Maury
Legislative Counsel

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM: **Legislative Counsel**

EXTENSION [ ] NO.

DATE **12 May 1971**

STAT

TO: (Officer designation, room number, and building)	DATE RECEIVED	DATE FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1. Ex/Dir				**The attached statement by Senator Ervin before the Hanley Subcommittee regurgitates the old allegations and gives us a pretty good idea of the kind of misconceptions that prevail on the Hill. I think we should be fully prepared to refute each of them, at least so far as CIA is concerned.**
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John M. Maury
Legislative Counsel

wage-price policy along the lines set forth countless times by the Joint Economic Committee is an ominous failure of policy responsibility by the administration.

President Nixon recently expressed dismay over the fact that America's share of world steel production dropped from 50 to 20 percent in the last two decades. I urge him to ponder the fact that the steel industry has traditionally reacted to reduced demand growth by raising prices—exactly the opposite of traditional economic conduct. Higher prices force a lower rate of operation which generally is accompanied by a lower increase in productivity. Such price increases serve to generate a vicious circle of stagnancy which is further abetted by a traditionally weak modernization policy in the steel industry. No wonder that foreign competition is cutting into their market heavily. How can the U.S. steel industry compete if it falls behind in productivity?

What makes it worse is the possibility that the steel industry will try to perpetrate another increase later this summer after the wage negotiations. The industry has already tried to justify the present increase on the basis of past wage rises.

Mr. President, unless President Nixon immediately adopts stronger policies, and specifically an effective wage price program, this country will suffer an intensification of inflation even with the 6-percent unemployment that will prevail for most or all of this year.

I ask unanimous consent that the New York Times editorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

CONFUSION IN STEEL

The vapidity of the Administration's program for curbing the wage-price spiral has never been more dismayingly evident than in its approach to the steel industry. Even now, with the dollar in acute trouble in world money markets and with the wholesale price index signaling another upsurge in domestic inflation, the White House has thrown a mantle of total confusion over developments in this most basic of American industries.

Last January, when Bethlehem Steel announced a 12 per cent increase in structural steel prices, President Nixon made plain his extreme displeasure and hinted that he might retaliate by letting more foreign steel into this country. Action by United States Steel to trim the increase to 6.8 per cent ended that confrontation.

Now United States Steel has taken the lead in a price rise averaging 6.25 per cent on the types of steel used to make automobiles, appliances and other consumer goods. This time the White House says it is "disappointed" but emphasizes that it doesn't plan to seek a rollback. The Council of Economic Advisers shrugs off the increase as merely an extension of the round that began with higher prices for construction steel. A spokesman says the council's real concern is over the danger of another jump in steel prices after the industry's crucial wage negotiations this summer.

And what is the Administration's contribution to a moderate settlement in those talks? More confusion. In mid-April, after holding aloof from pattern-setting negotiations in the can industry, the President's economic advisers issued an "inflation alert" in which they warned that extension of the can settlement to steel would undermine that industry's ability to compete with foreign steelmakers and sharply cut job opportunities in domestic mills.

In a news conference last weekend the President underscored this warning by declaring that America's share of world steel production had dropped from 50 per cent to 20 per cent in the last two decades and that the industry would lose its ability to compete if the forthcoming labor agreement did not reflect "competitive realities."

The very next day reports came out of Washington that some of the President's closest advisers were resigned to a steel settlement as high as the one in the can industry. "Anyone who thinks the settlement in steel will be less than the can settlement is out of his mind," was the crisp summary one high official gave of the White House attitude.

Union leaders, already under intense rank-and-file pressure, are bound to take the new price increases in steel and the absence of any inclination by the Administration to institute a comprehensive incomes policy as a green light for wage increases far in excess of productivity. The inevitable result will be more inflation, a further weakening of the dollar's international standing and more trouble for American steelmakers and steelworkers in withstanding overseas competition.

THE NEED TO APPOINT FEMALE PAGES

Mr. BAYH. Mr. President, I wish to express my wholehearted support for the resolution expressing the sense of the Senate that girls should be allowed to serve as Senate pages. We discussed a similar issue last year, during the debate on the proposed equal rights amendment. While the measure ultimately was defeated by the addition of extraneous amendments, the quality of debate was high. I hope that this year, as before, the Senate will pay serious attention to the need to insure equal rights and opportunities for both men and women.

Today, the question of equal rights for men and women is again before us. The resolution should not require prolonged debate. We are not being asked to determine constitutional law. To me the issue is simple: Admission of female pages would reinforce the desire of this Chamber to be as representative as possible—to discard old myths when they have been proven false and discriminatory.

During a time of citizen concern over the broad questions of civil, legal, and human rights this body must continue to demonstrate good faith in support of these rights. And there is no good reason not to do so by admitting female pages.

Of course, some are concerned that page duties are physically too strenuous or that the hours are irregular. While these concerns are sincerely voiced, they are not decisive. For the fact is that girls have been employed during equally irregular hours in the Senate mail rooms performing tasks which are physically more demanding than those of pages. Clear precedent has already been established by this body.

Finally, page duty is an education as well as a job opportunity—and equal educational opportunity has long been a theme of congressional legislation.

We are all aware that the work of a Senate page is hard, exhausting, and sometimes tedious. But we must not forget that it is also one of the finest opportunities for a student to gain a practical and intimate understanding of representative Government. All of us at some time or another have pleaded with a group of young people to be more realistic or pragmatic in the demands they place upon Congress. I have often wished that I could share with these young people—both men and women—a firsthand understanding of Congress and its intricacies. Appointing a Senate page is one way to do so.

I believe we should adopt this resolution and expand the privilege of serving as a page to women as well as men. For they are all citizens and future opinion makers.

STATEMENT BY SENATOR ERVIN BEFORE HOUSE SUBCOMMITTEE ON EMPLOYEE PRIVACY AND S. 1438

Mr. ERVIN. Mr. President, today I testified before the House Subcommittee on Employee Benefits which is holding hearings on employee privacy legislation such as S. 1438, which I introduced in the Senate. The bill was passed by overwhelming votes of the Senate in the last two Congresses. It is now cosponsored by 51 Senators.

I told the House subcommittee that the privacy and constitutional rights of employees and applicants for employment in the executive branch require the protection of a law such as S. 1438 would provide.

There has been a serious need for such a law for many years. With the recent growth of the Federal Government and the unprecedented extension of its powers, its attitudes toward its employees will affect the lives and privacy of more Americans than ever before in our history.

There are some outrageous invasions of individual privacy and violations of rights which take place today. Many of them are sanctioned by Government and powerful private economic interests.

The individual, even a Member of Congress, has few enough chances to challenge or halt many of these. I believe my privacy bill offers every Member of Congress an immediate chance to halt some of the privacy invasions. Fifty-one Members of the Senate have cosponsored the bill as S. 1438 this year. In the last Congress, the Senate passed it by unanimous consent. In the 90th Congress, the Senate passed it with a 79-to-4 vote, and, counting absentees, with the total approval of 90 Members.

The bipartisan support for the bill is illustrated in its continuous sponsorship by Democrats and Republicans of all persuasions. In policy statements during the last presidential campaign, the candidates of both major political parties strongly supported new protections for the constitutional rights of Federal employees and guarantees against un-

warranted invasions of their personal privacy. The Democratic candidate wisely promised legislation based on the findings of the Senate Constitutional Rights Subcommittee and other congressional committees.

Platforms of both major parties acknowledged the privacy problem. In its platform, the Republican Party stated:

"The increasing government intrusion into the privacy of its employees and of citizens in general is intolerable. All such snooping, meddling and pressure by the federal government on its employees and other citizens will be stopped and such employees, whether or not union members, will be provided a prompt and fair method of settling their grievances.

Time is running out for fulfillment of these campaign promises. I would like to see this administration remove the blinders it inherited, and give this employee privacy bill top priority on its list of "must-have" laws.

I first introduced a similar bill in 1966 when it became apparent that executive branch politics were working to deprive people who worked for government of basic rights which belonged to them under the first amendment to the Constitution.

They were being compelled to reveal things about themselves which under the merit system, the Government had no business asking. They were told to fill in computer-punched cards with their race, and national origin, added to their names and social security numbers.

On pain of losing their jobs, employees were told at all grade levels to respond to broad inquiries about the way they handled their personal and family finances, and how their relatives spent their own money.

On pain of not getting a job, or a promotion, or a clearance, people were being subjected to extensive questions about their religious beliefs and practices, such as whether they believed in God, or the second coming of Christ, or how often they read the Bible.

They were submitted to questions about personal family relationships, such as whether or not they loved their mother or hated their father, and whether or not they enjoyed "sweet and peaceful family relationships."

They were solicited for responses to questions about their sexual attitudes and conduct, such as whether or not they "petted," how often they had intercourse and with whom, whether or not they took birth control pills, whether they dreamed about sex matters, and many other intimate details which were none of the business of Government to demand from its employees and applicants.

I know of nothing in the Constitution which authorizes Federal officials to use economic sanctions to make such inquiries of citizens, regardless of the stated purpose. Such inquiries cropped up time and time again with different justifications from officials. National security, emotional stability, mental health, ethical and moral conduct were among the reasons given. I believe a study of the reasons for the first amendment and fifth amendment and of the Supreme Court decisions on them will demonstrate that such questions are unauthorized for the purpose and that they have no substantial relevance to the purpose of Government. Yet such outrageous inquiries were and are put to people by questionnaires, interviews, and lie-detector machines.

We found that the Government was pursuing some other inquiries and investigations which were none of its business. In the interest of furthering administration equal employment goals, its beautification program and other social, political, and economic plans, employees were told in regulations, and verbally, to go out and use their own time to lobby for open housing legislation and municipal ordinances on civil rights, to work in ghettos, paint fences, buy grass seed, support the Urban League and the NAACP, and to engage in many other suggested community activities.

They were then told to report back to their supervisors what they had done. When one large group of employees asked what would happen if they did not do such things, they were told they would be considered uncooperative and that their personnel files would reflect their attitudes.

Under our Constitution, it seemed to me that a man can certainly decide for himself whether he wants to be politically or socially active in his community. If he wants to be silent and do nothing at all, that is his business. There is nothing in the Constitution saying that just because he works for Government he should have to report to his supervisor that he prefers to go fishing on Saturday instead of demonstrating for a Government-supported cause.

Yet, apparently, this is the word passed from the White House by its civil rights Executive order to the Civil Service Commission and down to the department and agency officials all over the country.

Apparently, too, things have not changed all that much. The Subcommittee on Constitutional Rights received complaints that some employees were "urged" to take part in Veterans Day activities to show their support for the administration.

A recent press release issued by the Civil Service Commission—and I have it here—states that "a new program to facilitate voluntary service by Federal employees has been launched by the Civil Service Commission Chairman in support of the President's program to strengthen voluntary activity in the United States." It further stated:

Based on experience in a model developed in the Washington area by the Civil Service Commission, Chairman Hampton has urged Federal Executive Boards and Federal Executive Associations throughout the country to develop similar methods for matching the volunteer needs in the community with the skills of Federal employees willing to volunteer their services. He suggested that appropriate Federal officials in local communities contact local Health and Welfare Councils and explore with them the needs for volunteer service and then get the word to Federal employees in the area about the services needed. He further suggested the establishment of a separate office manned by volunteers which would list the volunteer openings and match them against the Federal employees who indicated a willingness to serve.

The experimental project in the Washington area has been highly successful. In a period of 3 months, approximately 300 Federal employees accepted volunteer assignments from 109 different voluntary agencies. These were in urban service centers, community schools, hospitals, and playgrounds and included, among other things, tutoring, teaching arts and drama, community action, services to handicapped, sports and recreation, and services to children. The Federal employees came from 60 different Federal agencies.

Expanding this idea to other communities will give the charitable agencies much needed volunteer manpower, Chairman Hampton said. Federal Executive Boards are located in 25 large metropolitan areas. . . . Extension of the Washington model to other communities was carried out in cooperation with the Office of Voluntary Action, the staff arm of the Cabinet Committee on Voluntary Action established by President Nixon last May.

It is too soon to tell how this new Commission program will work out, but it seems they would have learned the lessons of the past. They have also failed to recognize the truth I learned in the infantry from World War I: that a request from a superior is equivalent to a command.

One example of the implementation of such a program came to my attention through Mr. Griner of the American Federation of Government Employees. Defense Supply Agency employees at Rough and Ready Island in California were given a "Community Relations Questionnaire" which asked whether the employee is a member of service groups, such as Kiwanis, Rotary, and others; whether he is a member of educational, civil, or similar community committees, such as chambers of commerce, and others; whether he is a member of professional associations or organizations and which ones; and whether he has membership in local PTA's and churches. I concluded from this that the agency had some "Rough and Ready" policies.

The questionnaire states at the bottom that it is "required to be returned to your supervisor not later than the close of business December 3, 1970."

I sent a letter inquiring about any departmental directives authorizing such questionnaires and received a reply from the staff director of civilian personnel telling the subcommittee that "the participation of Defense Supply Agency employees, as individuals, in community activities is recognized as an important factor in sustaining mutual acceptance, respect, cooperation and an appreciation by the agency personnel and community affected by their operations." He said that the questionnaire resulted from a "well intentioned but imperfectly communicated desire by the public affairs officer to gage the approximate extent of community activities based upon information voluntarily provided by employees." He further stated:

The questionnaire was distributed with verbal instructions that its completion was voluntary on the part of the employee, whereas the questionnaire itself stated it was required to be turned in.

It seems that in a recent communication to the Secretary of Defense, General Hedlund had identified as a management challenge "learning to recognize and understand growing individualism and activism in today's society as these relate to personnel management." The General's word had become an order.

When he heard these complaints, this personnel officer attempted to perform his duty. He issued a directive telling supervisors to be careful about their expression of interest in non-work matters and to encourage their staffs always "to be concerned with preventing such misunderstandings by limiting employee inquiries, written or oral, to matters clearly connected with the employee's work."

It is hard for me to see how personnel officers and supervisors can follow this rule of reason when their political superiors have made it clear they are to do just the opposite. There is no way to avoid such wholesale inquiries into the employee's private life as long as the Government makes clear its desire that he go out and support programs and policies which it endorses.

We also found that employees were ordered to attend meetings called or sponsored by their agencies or supervisors in order to guide their thinking on sociological and political issues which had nothing to do with their jobs.

With one complaint of such attempted indoctrination of employees at a Federal installation, a civil servant enclosed a memorandum taken from a bulletin board stating the time, place, and date of a lecture by a sociology professor on the subject of the importance of racial integration. Attendance was to be voluntary but the notice stated that a record would be made of those attending or not attending.

To my mind, such programs constituted official intimidation of citizens to conform their thinking on public issues to those of the administration.

I found nothing in the Constitution which authorized officials of the employee's department to require attendance at such brain-washing sessions held under the auspices of the Government. Nor were they authorized under the Constitution to take note of attendance at such Government-sponsored or Government-endorsed meetings and lectures.

Here again, there is no sign that things have changed very much in the Federal Service. For example, our subcommittee has received many employee complaints about the sensitivity-sessions they are required to attend to change their "cultural attitudes and behavior" on racial issues, equal rights for women and the role of minority groups. I am told this is being done under the equal employment order issued by President Johnson to promote civil rights in Government. In these out-of-town meetings run by psychologists and other behavioral scientists, people are subjected to emotionally charged situations deliberately staged to manipulate and provoke human emotions in sensitive matters of the intellect and personality.

The reports received from employees and other Members of Congress about the way HEW programs were operating were so disturbing that I asked Secretary Richardson to investigate the matter and suspend [illegible]ssions pending his report. I also asked [illegible]m to answer some simple questions so I and other Members could advise employees of their rights, since these people could get no answers from their supervisors.

That was on March 19, and to date, the subcommittee has received no reply from the Department.

In relaying these complaints, I also informed the Secretary:

It has become clear from the complaints by responsible employees, from reports by acknowledgeable experts in the fields of labor-management relations and from psychiatrists, psychologists and specialists in human relations, as well as from my own studies of this matter, that this program goes far beyond the needs of personnel training in any department or agency of government.

On the basis of my own investigation, I am convinced that the scope of this program and the techniques used in some of the sessions amount to economic coercion of the individual to submit to official attempts to control his thoughts and emotions in ways completely uncalled for in the employment relationship. However useful such techniques may be for treating psychiatric problems in private practice on a voluntary basis, it is not the business of government to inflict them on its employees.

The Subcommittee study has amply demonstrated the need for more governmental recognition of the constitutional rights which employees possess as citizens. No one, therefore, can fault a management training program to teach better understanding of management duties and to develop the ability to deal with the human relations aspect of a job. However, there are well-established methods of instilling and teaching the principles and personnel techniques involved in such duties. It is tyranny over the mind of the grossest sort to subject employees to a probe of their psyches, to provoke or even require disclosure of their intimate attitudes and beliefs.

Even the soundest professional supporters of such techniques have emphasized the need for voluntary, enthusiastic participation by the individual. From the reports received by the Subcommittee, it appears that there is not even a gesture toward voluntarism in the government programs. Rather, employees have been ordered to leave their homes and families at some hardship and live for a period in seclusion with fellow employees and supervisors, while being subject to psychological encounter sessions. People who protest have been given the option of refusing to disobey an order or of requesting an exemption on psychiatric or emotional grounds.

An Agriculture employee writes:

During our two and a half day session on Civil Rights, we were subjected to hearing lectures, speeches, stories, songs or what have you which in many instances were full of foul language even to the point of being vulgar (morally crude, offensive, earthy, profane) and obscene (disgusting to the senses, repulsive).

Other employees of that Department wrote about being required to watch films and to listen to tape recordings of speeches by Dick Gregory and other civil rights activists stressing how whites were hated and what these people were going to do about it. Clearly, such sessions intrude on First Amendment freedoms, and just as clearly, as these letters demonstrate, they are counterproductive for the administration's purposes.

The subcommittee has received numerous complaints from employees of other departments describing encounter sessions.

There are many other ways Government attempts to intimidate the private thoughts and behavior of people who work for it.

One of the most serious, however, is the economic coercion of those citizens to invest their money in U.S. savings bonds, or to donate to charitable causes. Congress has received many reports of blacklisting, reprisals, threats of loss of security clearances, and other official adverse actions because employees wanted to make their own decisions about how they donated or invested their earnings. It is a long, unpleasant, and often unproductive route for employees to appeal such actions or for Congress to investigate them. The many cases received by the subcommittee proved the need for a plain statement in the law that such coercion of a person's freedom of thought and action is prohibited.

ENFORCEMENT MACHINERY

On the basis of complaints on these and many other privacy invasions, it was clear to me and the cosponsors of this proposal that the law fails fully to protect the rights of the citizen who work for Government. It is sometimes impossible for him to challenge unconstitutional governmental programs or unconstitutional demands on him for information. He is without the legal statutory right to have counsel or someone else with him if he wishes in sessions which may result in disciplinary actions. He is denied or inhibited from pursuing any administrative remedies. He is refused access to the courts under laws and judicial decisions which would leave such programs to the discretion of the executive branch.

So in addition to simple prohibitions on unconstitutional actions of Government, my bill also establishes certain enforcement machinery which includes a right to counsel in certain cases, a board on employee rights where an applicant or employee may obtain a hearing and action on complaints arising under this act; and it affords access to the Federal District Court in cases arising under this act.

This bill to protect employee privacy has had widespread public and editorial support throughout the Nation as well as support from employee unions and organizations. In fact, with few exceptions, the only people who seem against it are those whose power would be limited by it.

Despite the widespread public and congressional support, one would have thought that with this bill I sought to introduce the bubonic plague into the Federal service rather than the rule of law. Officials in the previous administration fought this simple proposal with every resource at its command. They conjured up incredible legal ghosts in an attempt to influence the uninformed or

intimidate the faint of heart. However much they vowed to alter administrative machinery or to change governmental attitudes, it was clear that they had closed their eyes and their minds to the real need for laws on the books to protect the first amendment rights of citizens.

I do not think anyone should be misled about the purpose of this bill. To hear some describe it, all of the ills which beset the Federal service will be cured by passage of the bill. Others have seized on it as the embodiment of all of the forces of Beelzebub.

It should be understood that my proposal does no more and no less than what it states in plain English, so that every political executive in the Federal Government will have notice of the constitutional limits of his power in certain specified matters. It leaves untouched the vast investigatory apparatus of the Government. It leaves untouched the many conflict-of-interest laws, the ethical conduct codes and all the other laws under which employees are investigated by the Civil Service Commission, the FBI, and by their departments, for determining their fitness for duty or their violation of the criminal laws or the violation of orders relating to their jobs.

During the 5 years we have worked with the bill in the Constitutional Rights Subcommittee, it has been subjected to careful refinement and amendment to meet any legitimate objections. These are listed in the Judiciary Committee report of the 91st Congress, No. 91-873.

In the version passed by the Senate last year and which I have reintroduced, the Federal Bureau of Investigation is exempted and there are certain carefully drawn exceptions for the two security agencies, the Central Intelligence Agency and the National Security Agency. These exceptions in S. 782 of last year were in addition to those contained in the bill which first passed the Senate in 1967 as S. 1035.

My sponsorship of this legislation does not imply a belief that there should be a law on everything the executive branch should not do to its employees. There are many things done in the name of worthy purposes which are foolish, tyrannical, repressive, or self-defeating. But they do not necessarily violate the Constitution. Nor can Congress legislate against all manner of fools and their follies.

It can and should legislate to protect the freedom of the mind which is guaranteed all citizens under the first amendment whether they work for Government or not.

Individuals should know that they have a legal remedy when economic coercion is used to compel them to speak, think, or act against their will in favor of Government causes, or about personal matters which are none of the business of Government.

The need for such a remedy is underscored by the directives I have seen recently prohibiting employees from contacting personnel offices and supervisers who could take action on problems.

It is undermined by the written and verbal "gag rules" ordering employees not to tell Congress about their problems and, in some cases, even not to contact Members of Congress without reporting it to their supervisors.

Nor can employee unions and organization completely protect against such complaints, although within their limited resources, they have been increasingly active in protecting privacy. In this connection I am reminded of the union concern in the last Congress when a Pentagon personnel official warned unions against going to the press or to Congress with their grievances. Furthermore, not all employees and applicants are members of unions nor should they be required to join to assure their first amendment right to privacy.

Nor does the remedy rest with the Civil Service Commission. Their attitude toward privacy is revealed by their response to my inquiry about piped-in music. After receiving complaints about this subject, I asked the Commission what grievance channels were available to employees who resented having to work by piped-in music, some of it raucous hillbilly or jazz. Without expressing any opinion on the matter, I asked whether any rules existed whereby an agency could involve its employees in the decision about whether to use it, and in the choice of music. The Commission sent me a long letter arguing that the Supreme Court has held there is no constitutional right to be free of music on buses and that people had to get used to the sounds of daily living, whether they are in the city or the country.

Undreamed of privacy invasions are being made possible or furthered by great computer systems, by the new technology with all its sophisticated devices and instruments. Some of these raise constitutional issues. Some do not.

The time has come, I believe, for Congress to consider establishing a tribunal independent of the Civil Service Commission, to hear and judge the many complaints of violation of privacy rights of employees.

The Civil Service Commission was created to be the handmaiden of the Chief Executive and to pursue his mandates in the general management of the Federal service. Its staff have an unbelievable burden to carry to assure the responsible and efficient operation of the Federal service. Too often, any constitutional rights employees possess have been administered and implemented by the Commission, and the energy and zeal behind them has come from the good will and good faith of Commission members dependent on staffing, time and resources. The impetus for their enforcement often stems from political pressure with help from the courts.

We live in a government of laws, not of men. The constitutional rights of citizens even those who work for the Federal Government, should depend on laws, not Executive orders; on the application of due process of law, not on the grace of the Civil Service Commission.

This is not a new idea, but one which may have new urgency with the new employee problems. I think it bears exploration.

But I do not see the establishment of such a body or any other new laws as alternatives to the passage of the employee privacy legislation before the House and the Senate.

I therefore urge the immediate enactment of that legislation, unencumbered, undiluted, and in the form passed by the Senate in the last Congress and as reflected in S. 1438 of this Congress.

WELFARE REFORM

Mr PACKWOOD. Mr. President, welfare reform has been listed as this administration's No. 1 legislative goal. Although we here in the Senate disagree among ourselves on the shape of reforms that are needed, I think we too are unanimous in recognizing that some type of welfare reform is desperately and urgently needed.

Before any constructive proposals can be put forth, we first must examine the nature and source of the problems, both from the point of view of the welfare recipient, the taxpayer, and the welfare administrator. Additionally, we must carefully consider the varying needs and standards from one State or area to another. New York's needs and solutions will not be identical to Oregon's, and California's will probably differ from Maine's. It seems to me that geographical and economic diversity must be kept closely in mind as we begin to examine the specifics of the various welfare reform proposals before us.

The Oregon House of Representatives has recently completed a task force study on welfare in Oregon and has issued a very thoughtful and constructive report. In view of the relevance of this subject, I ask unanimous consent that the task force report be printed in the RECORD. I commend it to Senators for their consideration.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

HOUSE TASK FORCE ON WELFARE 1971 REPORT TO THE 56TH LEGISLATIVE ASSEMBLY

MEMBERS OF THE HOUSE TASK FORCE ON WELFARE

Representative Anthony Meeker, Chairman.
Representative George F. Cole.
Representative Leigh Johnson.
Representative Richard Magruder.
Representative Gordon Macpherson.
Charles McKeen, Administrative Assistant.
Marion Blue, Secretary to the Committee.
Interns: Gail Jeffries, John Houser, Allen Shibata, Rush Yeates.

INTRODUCTION

Welfare programs were instituted in the United States as an emergency measure in the 1930's to aid those who were "ill-housed, ill-clothed, and ill fed" as a result of massive unemployment and a decaying economy. Today, nearly 40 years after its inception, public assistance has strayed far from its original purpose. It has become a mammoth, uncoordinated bureaucracy providing permanent income rather than *emergency* income for people in need.

In 1970, there were 72,443 applications for public assistance in Oregon compared with 43,548 two years earlier. In 1970, welfare assistance was given to 50,331, or 69.47 percent of those applying compared with 26,543, or 61.04 percent, in 1968. *In two years the number accepted for public welfare in Oregon nearly doubled.*

In the Aid-to-Dependent-Children category, the increase was even more dramatic,

Crown Letter

CENTRAL INTELLIGENCE AGENCY
Office of Legislative Counsel
Washington, D. C. 20505
Telephone: [redacted] Code 143-6121)

STAT

7 May 1971

TO: Mr. Victor Zafra
Room 464 Executive Office Building
Office of Management and Budget

Per our conversation, an early reaction would be appreciated since we are concerned that something might pop in the Senate.

151

George L. Cary, Jr.
Deputy Legislative Counsel

FORM 6-68 1533 OBSOLETE PREVIOUS EDITIONS (40)

SENDER WILL CHECK CLASSIFICATION TOP AND BOTTOM

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OFFICIAL ROUTING SLIP

TO	NAME AND ADDRESS	DATE	INITIALS
1	Executive Director		
2	The Director		
3			
4			
5			
6			

	ACTION		DIRECT REPLY		PREPARE REPLY
	APPROVAL		DISPATCH		RECOMMENDATION
	COMMENT		FILE		RETURN
	CONCURRENCE		INFORMATION		SIGNATURE

Remarks:

In view of the pulling and hauling with Senator Ervin over his bill last year, I believe we should make the record clear that we still desire a full exemption and recommend you sign the attached letter. It has been cleared with OMB.

TO 1. Your consideration

STAT

John M. Maury
Legislative Counsel

FOLD HERE TO RETURN TO SENDER

FROM: NAME, ADDRESS AND PHONE NO.	DATE

	UNCLASSIFIED		CONFIDENTIAL		SECRET

FORM NO. 1-67 237 Use previous editions (40)

The purposes clause of the National Security Act of 1947 (P. L. 80-253) states that: "In enacting this legislation, it is the intent of Congress to provide a comprehensive program for the future security of the United States;...".

The Act then goes on to establish the Central Intelligence Agency and the position of the Director of Central Intelligence and in Section 102(c)(3) specifically charges the DCI with responsibility"...for protecting intelligence sources and methods from unauthorized disclosure...".

The CIA Act of 1949 (P. L. 81-110) grants the DCI authority to protect such sources and methods by exempting the Agency "...from the provisions... of any...law which require[s] the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency...".

S. 782 raises a serious question of statutory interpretation concerning possible conflict between S. 782 and the authorities and responsibilities now reposed in the Director by the provisions of law referred to above.

S. 782 specifically authorizes adversary procedures which pose a serious paradox--the Agency must either remain silent in the face of unfounded allegations (with the alleged offending officer taking the consequences of the sanctions embodied in the bill), or it must divulge information which it is obligated by statute to protect, and disclosure of which might damage the national intelligence effort.

A detailed analysis and explanation of the adverse impact of the bill on the fundamental security interests of the Agency is attached. In sum they make clear that enactment of the bill without a full exemption for CIA and other members of the intelligence community such as NSA would be a most serious obstacle to the effective protection of intelligence sources and methods. Without a complete exemption, S. 782 would seriously weaken the Agency's efforts to prevent penetration by a hostile intelligence service, to ensure that its employees are suitable in all respects for employment in this sensitive Agency, and in general make it much more difficult for the Director of Central Intelligence to discharge his responsibilities under existing law.

Approved For Release 2005/08/03 : CIA-RDP81-00818R000100050001-8

Section-By-Section Analysis of Certain Provisions of "Invasion of Privacy" Bills (H. R. 7969, H. R. 7199*, S. 1438)

Section 1 (b). Prohibits taking notice of attendance or lack of attendance at any assemblage, discussion, or lecture held or called by any officer of the Executive Branch, or by any outside parties or organizations to advise, instruct or indoctrinate any civilian employee in respect to any matter or subject other than the performance of official duties.

The purpose of this section is to protect employees from compulsion to attend meetings, discussions, and lectures on political, social, and economic subjects unrelated to his duties.

The language is so broad that it can be interpreted to prohibit a department or agency from taking notice of the attendance of an employee at meetings of subversive organizations or meetings designed to undermine the Government of the United States. Many departments and agencies, and particularly those dealing with security matters, would find such a prohibition intolerable.

Section 1 (d). Makes it unlawful to require an employee to make any report of his activities or undertakings not related to the performance of official duties unless there is reason to believe that the employee is engaged in outside activities or employment in conflict with his official duties.

The purpose of this section is to guarantee the freedom of an employee to participate in any endeavor or activity in his private life as a citizen, free of compulsion to report to supervisors his action or inaction, his involvement or his noninvolvement. It is to assure that he is free of intimidation or inhibition as a result of the employment.

This section is of primary importance to those agencies concerned with security matters which could be seriously compromised by employee activities and relationships not directly connected with his employment. Security agencies must request their employees to report contacts with foreign officials not only to give the employer notice of the relationship but also to protect the employee in his personal security should the foreign official be a member of an intelligence service. Similarily, the security agencies must request employees to submit publications and speeches for clearance in advance to insure that there is no inadvertent disclosure of intelligence information.

*See page 6

Section 1 (e). Makes it unlawful to require or request any applicant or employee to submit to any interrogation or examination designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters. The section also prohibits the use of psychological testing to inquire into these same areas. These questions may be asked only on the determination by a physician that they are necessary to enable him to determine whether or not an employee is suffering from mental illness. An employee may be informed of a specific charge of sexual misconduct and afforded an opportunity to refute the charge.

A partial exemption from this subsection is provided for CIA and the NSA in section 6. These agencies may use psychological testing in the proscribed areas on the basis of a personal finding by the Directors or their designees in each individual case that the information is necessary to protect the national security.

Psychological testing in these areas is part of the total screening process which has been established to weed out applicants with undesirable traits. It is of primary concern to security agencies. The exemption provided by section 6 affords some relief, but it will still be necessary to make personal findings in each individual case. This implies that psychological screening is an exception rather than the necessary procedure in every case.

Section 1 (f). Prohibits the use of a polygraph test designed to elicit from an applicant or employee information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices or concerning his attitude or conduct with respect to sexual matters.

The purpose is not to prohibit the use of the polygraph but to prohibit its use to elicit information considered to be of a personal nature.

A partial exemption from this subsection is provided for CIA and NSA in section 6. The polygraph may be used in the proscribed areas on the basis of a personal finding by the Directors or their designees in each individual case that the test is necessary to protect the national security. As with the psychological testing, polygraph testing is of primary concern to the security agencies who have found it to be not only an invaluable supplement to field investigations but uniquely effective in detecting certain types of security vulnerabilities. It is particluarly useful in uncovering undesirable characteristics which do

not appear in field investigations. The requirement for individual findings in each case to obtain relief from this subsection implies that polygraph screening is an exception rather than a necessary procedure.

Section 1 (i). Makes it illegal to request any employee to disclose any items of his property, income, or other assets, sources of income, or liabilities. The first proviso excepts those employees who have authority to make final determination with respect to claims which require expenditure of monies of the United States. The second proviso excepts reports as may be necessary or appropriate for the determination of liabilities for taxes, tariffs, custom duties, or other obligations imposed by law.

A partial exemption for the NSA and the CIA has been granted in section 6. Financial disclosure may be requested of an employee or applicant on the basis of a personal finding by the Directors or their designees in each individual case that the information is necessary to protect the national security. The broad language used could prohibit requesting certain information from employees for such things as credit union loans, health insurance reimbursements, and other programs designed for the welfare of the employee, which are not directly related to national security and thus not covered by the partial exemption granted CIA and NSA.

Section 1 (j). Makes it illegal to request financial disclosure from those employees excepted under the first proviso of subsection (i) other than specific items tending to indicate a conflict of interest.

Full financial disclosure assists both the employee and the Government in making what at best is a difficult decision as to conflict of interest. In the absence of full disclosure, it appears that this burden is placed entirely upon the employee.

Section 1 (k). Makes it illegal to require an employee who is under investigation for misconduct to submit to interrogation which could lead to disciplinary action without the presence of counsel or other person of his choice if he so requests. In the case of NSA and CIA, counsel must be either another employee of, or approved by, the agency involved.

This right inures to the employee at the inception of the investigation and does not require that the employee be accused formally of any wrongdoing before he may request presence of counsel or friend.

This section is understood to be of concern to all departments and agencies and could lead to a serious deterioration of employee discipline. If a supervisor asks an employee for an explanation of consistent tardiness the employee is entitled to counsel at this stage. The section is of even more concern to the security agencies which may find it necessary to interrogate an employee regarding activities related to security matters.

Section 1 (1). Makes it illegal to discharge, discipline, demote, deny promotion, relocate, reassign, or otherwise discriminate against an employee by reason of his refusal or failure to submit or comply with any requirement made unlawful by this act.

The purpose of this section is to prohibit discrimination against any employee because he refuses to comply with an illegal order as defined by this act or takes advantage of a legal right embodied in the act.

This section, combined with section 4, could seriously undermine the authority of any executive agency to conduct its business. For example, any employee being transferred to a post to which he objects could block the transfer with a suit alleging a violation of this act until such time as the case is brought to trial and it is proven that the transfer is for the benefit of the Government and is not a disciplinary action.

Section 4. Permits any employee or applicant who alleges that an officer of the Executive Branch has violated or threatened to violate provisions of the act to bring a civil action in the district courts.

The potential of this section when combined with section 1 (1) is most serious. With the written consent of any person affected or aggrieved by a violation or threatened violation, any employee organization may bring action on behalf of such person, or may intervene in such action. This would appear to establish a basis for jurisdictional conflicts between competing unions. Further, this section and section 5 establish two new forums for an employee who is terminated for cause to contest the termination on the issue of a violation of this act.

Since the court action authorized by the bill is against the offending supervisor rather than the department or agency, the practical result is litigation between one employee and another. This in turn could expose supervisors to continued harassment by disgruntled employees with the result of a serious breakdown in discipline and reluctance of qualified employees to accept supervisory responsibility.

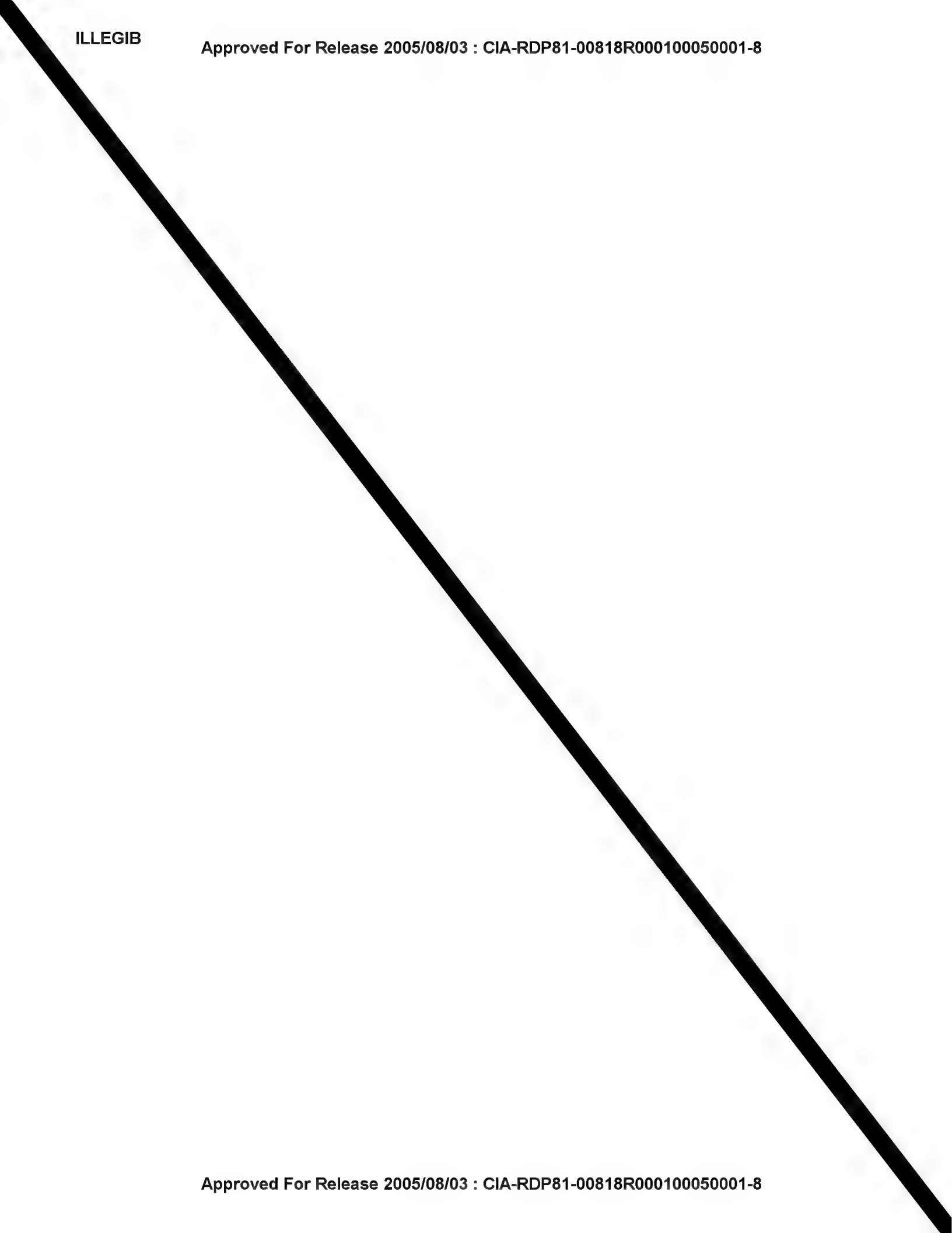
With respect to applicants, this section has most serious implications. All departments and agencies would be subject to harassment by any applicant who is not hired for the position he feels qualified to fill. For example, subversives acting on their own or on instruction from foreign agents could file suits for the sole purpose of harassment based on allegations of improper questioning during recruitment interviews.

Section 5. Establishes an independent Board on Employees' Rights to provide applicants or employees with an alternative means of obtaining administrative relief from violations of the act short of recourse of the judicial system. It creates the same potential for harassment as section 4. If the charged employee loses his case before the Board, he can still take it to the courts.

Section 6. Permits the CIA and the NSA to request employees or applicants to take a polygraph test or psychological testing designed to elicit information concerning his personal relationship to any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters, or to provide a personal financial statement if the Directors, or their designees, make a personal finding with regard to each individual case that the test or information is required to protect the national security. In view of previous comments in connection with subsection 1(e) (psychological testing) and with subsection 1(f) (polygraph) this section implies that these screening aids will be used as an exception rather than the necessary procedure in every case.

Section 7. Requires an employee of CIA or NSA to give his employing agency 120 days to prevent threatened violation of the act, or redress an actual violation of the act, before proceeding before either the United States district court or the Board on Employees' Rights. This requirement for notice does not apply to CIA or NSA applicants who, along with all other Executive Branch employees and applicants, have a right to bring an action before the Board or the district court and disregard existing administrative remedies or grievance procedures.

The section reaffirms the existing statutory authority of the Director of Central Intelligence and the Director of the National Security Agency to terminate the employment of any employee. However, the potential for statutory conflict still exists should the Director terminate an employee for cause under existing statutory authority and a district court order reinstatement on a finding of a violation of the act.



TRANSMITTAL SLIP	DATE
TO:	
ROOM NO. / BUILDING	
REMARKS:	

This was prepared as a hand-out for the Hanley Subcommittee breakfast meeting at CIA on 9 June 1971.

FROM:		
ROOM NO.	BUILDING	EXTENSION

FORM NO 1 FEB 55 241 REPLACES FORM 36-8 WHICH MAY BE USED. (47)

Section 1 (b). Prohibits taking notice of attendance or lack of attendance at any assemblage, discussion, or lecture held by any officer of the Executive Branch, or by any outside parties of organizations to advise, instruct or indoctrinate any civilian employee in respect to any matter other than the performance of official duties.

Effect:

The language is so broad that it could prohibit an agency noting the attendance of an employee at meetings or gatherings of subversive and radical groups designed to undermine the Government of the United States.

Section 1 (d). Prohibits requiring an employee to report his unofficial outside activities unless reason to believe a conflict with official duties.

Effect:

This section is of primary importance to security agencies which for security reasons are concerned with outside activities of employees. Contacts with foreign officials are to be reported as a matter of information to protect the employee should the official be a member of an intelligence service. Similarily, security agencies must review publications and speeches of employees in advance to insure that there is no inadvertent disclosure of classified information.

Section 1 (e). Prohibits requiring or requesting any applicant or employee to submit to interrogation concerning: his personal relationship with any person related to him by blood or marriage, his religious beliefs or practices, or his attitude or conduct with respect to sexual matters. Prohibits the use of psychological testing into these same areas. These questions may be asked only by a physician to determine if an employee is suffering from mental illness. An employee may be informed of a specific charge of sexual misconduct and afforded an opportunity to refute the charge. Section 6 provides CIA and NSA the use of psychological testing in the proscribed areas on the basis of a personal finding by the Directors or their designees in each case that the information is necessary to protect the national security.

Effect:

Psychological testing in these areas is an important part of the total screening process to weed out applicants with undesirable traits. The exemption provided by Section 6 does not recognize that psychological screening is an integral part of the processing in every case.

*See page 4.

Section 1 (f). Prohibits the use of a polygraph test designed to elicit from an applicant or employee information as stated in Section 1 (e) above. Section 6 provides CIA and NSA use of the polygraph in these proscribed areas on the same basis as above.

Effect:

As with psychological testing, polygraph testing is of primary concern to security agencies who have found it to be an invaluable supplement to field investigations but uniquely effective in detecting certain latent types of security vulnerabilities. The exemption provided by Section 6 does not recognize that polygraph testing is an integral part of processing in every case.

Section 1 (i). Prohibits requesting any employee to disclose his total financial worth or liabilities. Excepted are employees who make final determinations with respect to claims requiring expenditure of federal funds. Also excepted are reports for determining liabilities or obligations imposed by law. CIA and NSA under Section 6, may inquire into the financial matters of an employee or applicant after a finding by the Directors or their designees in each case that the information is necessary to protect the national security.

Effect:

The broad language could prohibit inquiring into such matters as credit union loans, health insurance reimbursements, and other programs designed for the welfare of the employee, not directly related to national security and not covered by the exemption granted CIA and NSA.

Section 1 (j). Prohibits requesting financial disclosure from those employees excepted under the first proviso of subsection (i) above other than specific items tending to indicate a conflict of interest.

Effect:

Full financial disclosure assists the employee and the Government in making a difficult decision as to conflict of interest. Without full disclosure, this burden apparently is placed entirely upon the employee.

Section 1 (k). Prohibits requiring an employee, under investigation for misconduct, to submit to interrogation which could lead to disciplinary action without the presence of counsel or other person of his choice if he so requests. In the case of CIA and NSA, counsel must be either another employee of, or approved by, the agency involved. This right inures to the employee when first questioned and does not require that the employee be accused of any wrongdoing before he may request presence of counsel or friend.

Effect:

This section is of concern to all agencies and could lead to a serious deterioration of employee discipline. If a supervisor asks an employee for an explanation of consistent tardiness the employee is then entitled to counsel. This is of even more concern to the security agencies which may have to question an employee regarding activities related to security matters.

Section 1 (1). Makes it illegal to discharge, discipline, demote, deny promotion, relocate, reassign, or otherwise discriminate against an employee by reason of his refusal or failure to submit or comply with any requirement made unlawful by this act.

Effect:

This section, combined with Section 4 below, could seriously undermine the authority of any agency to conduct its business. For example, any employee being transferred could block the transfer with a suit alleging a violation of this act until such time as the case is brought to trial and it is proven that the transfer is for the benefit of the Government and is not a disciplinary action.

Section 4. Permits any employee or applicant who alleges that an officer of the Executive Branch has violated or threatened to violate provisions of the act to bring a civil action in the district courts.

Effect:

This section with section 1 (1) is most serious. With the written consent of any person aggrieved, any employee organization may intervene in such action. This could establish a basis for jurisdictional conflicts between competing unions. Further, this section and Section 5 establish two new forums for an employee to contest his termination. Since court action is against the offending supervisor rather than the department or agency; the practical result is litigation between employees. This can expose supervisors to continued harassment by disgruntled employees resulting in a serious breakdown in discipline and reluctance of qualified employees to accept supervisory responsibility. With respect to applicants, this section has most serious implications. Any applicant who is not hired for the position he feels qualified to fill can initiate a suit. Further, subversives or radical groups could file suits for the sole purpose of harassment.

Section 5. Establishes an independent Board on Employees' Rights to provide applicants or employees with an alternative means of obtaining administrative relief from violations of the act.

Effect:

Creates the same potential for harassment as Section 4. If one loses his case before the Board, he can still take it to the courts.

Section 7. Requires an employee of CIA or NSA to give his employing agency 120 days to prevent threatened violation of the act, or redress an actual violation of the act, before proceeding before a court of the Board on Employees' Rights. Reaffirms statutory authority of Directors of CIA and NSA to terminate an employee.

Effect:

The requirement for notice does not apply to CIA or NSA applicants who have a right to bring immediate action. The potential for statutory conflict still exists should the Directors terminate an employee for cause and a court order reinstatement on a finding of a violation of the act.

Section 8. Recognizes the statutory authority of the Directors of CIA and NSA to protect or withhold certain information in the national interest.

Effect:

Information which the Directors determine must withhold may actually provide the only basis for refuting unfounded allegations. Since the sanctions in the bill are against the alleged offending employee, not the Directors, the net effect of withholding information is to make the charged employee bear the consequences, which can include loss of pay and termination. However, to disclose such information with its consequential damage to the national intelligence effort is even less acceptable.

*Note: H. R. 7199 is similar, except provisions of Section 7 above are omitted and FBI is granted partial, not full exemption.

The purposes clause of the National Security Act of 1947 (P. L. 80-253) states that: "In enacting this legislation, it is the intent of Congress to provide a comprehensive program for the future security of the United States;...".

The Act then goes on to establish the Central Intelligence Agency and the position of the Director of Central Intelligence and in Section 102(c)(3) specifically charges the DCI with responsibility"...for protecting intelligence sources and methods from unauthorized disclosure...".

The CIA Act of 1949 (P. L. 81-110) grants the DCI authority to protect such sources and methods by exempting the Agency "...from the provisions... of any...law which require[s] the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency...".

S. 1438 raises a serious question of statutory interpretation concerning possible conflict between S. 1438 and the authorities and responsibilities now reposed in the Director by the provisions of law referred to above.

S. 1438 specifically authorizes adversary procedures which pose a serious paradox--the Agency must either remain silent in the face of unfounded allegations (with the alleged offending officer taking the consequences of the sanctions embodied in the bill), or it must divulge information which it is obligated by statute to protect, and disclosure of which might damage the national intelligence effort.

A detailed analysis and explanation of the adverse impact of the bill on the fundamental security interests of the Agency is attached. In sum they make clear that enactment of the bill without a full exemption for CIA and other members of the intelligence community such as NSA would be a most serious obstacle to the effective protection of intelligence sources and methods. Without a complete exemption, S. 1438 would seriously weaken the Agency's efforts to prevent penetration by a hostile intelligence service, to ensure that its employees are suitable in all respects for employment in this sensitive Agency, and in general make it much more difficult for the Director of Central Intelligence to discharge his responsibilities under existing law.

S. 782

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Section 1 (b). Prohibits taking notice of attendance or lack of attendance at any assemblage, discussion, or lecture held by any officer of the Executive Branch, or by any outside parties of organizations to advise, instruct or indoctrinate any civilian employee in respect to any matter other than the performance of official duties.

Effect:

The language is so broad that it could prohibit an agency from noting the attendance of an employee at meetings or gatherings of subversive and radical groups seeking to undermine the Government of the United States.

Section 1 (d). Prohibits requiring an employee to report his unofficial outside activities unless there is reason to believe they conflict with official duties.

Effect:

This section is of primary importance to security agencies which for security reasons are concerned with outside activities of employees. Contacts with foreign officials should be reported as a matter of information to protect the employee should the official be a member of an intelligence service. Similarily, security agencies must review publications and speeches of employees in advance to insure that there is no inadvertent disclosure of classified information.

Section 1 (e). Prohibits requiring or requesting any applicant or employee to submit to interrogation concerning: his personal relationship with any person related to him by blood or marriage, his religious beliefs or practices, or his attitude or conduct with respect to sexual matters. Prohibits the use of psychological testing into these same areas. These questions may be asked only by a physician to determine if an employee is suffering from mental illness. An employee may be informed of a specific charge of sexual misconduct and afforded an opportunity to refute the charge. Section 6 provides CIA and NSA the use of psychological testing in the proscribed areas on the basis of a personal finding by the Directors or their designees in each case that the information is necessary to protect the national security.

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Effect:

This section, combined with Section 4 below, could seriously undermine the authority of any agency to conduct its business. For example, any employee being transferred could block the transfer with a suit alleging a violation of this act until such time as the case is brought to trial and it is proven that the transfer is for the benefit of the Government and is not a disciplinary action.

Section 4. Permits any employee or applicant who alleges that an officer of the Executive Branch has violated or threatened to violate provisions of the act to bring a civil action in the district courts.

Effect:

This section with section 1 (1) is most serious. With the written consent of any person aggrieved, any employee organization may intervene in such action. This could establish a basis for jurisdictional conflicts between competing unions. Further, this section and Section 5 establish two new forums for an employee to contest his termination. Since court action is against the offending supervisor rather than the department or agency; the practical result is litigation between employees. This can expose supervisors to continued harassment by disgruntled employees resulting in a serious breakdown in discipline and reluctance of qualified employees to accept supervisory responsibility. With respect to applicants, this section has most serious implications. Any applicant who is not hired for the position he feels qualified to fill can initiate a suit. Further, subversives or radical groups could file suits for the sole purpose of harassment.

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Section 8. Recognizes the statutory authority of the Directors of CIA and NSA to protect or withhold certain information in the national interest.

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*Note: H. R. 7199 is similar, except provisions of Section 7 above are omitted and FBI is granted partial, not full exemption.

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OLC

92D CONGRESS
1ST SESSION

H. R. 11150

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 1971

Mr. HANLEY (for himself, Mr. BRASCO, Mr. UDALL, Mr. CHARLES H. WILSON, Mr. GALIFIANAKIS, Mr. MATSUNAGA, and Mr. MURPHY of New York) introduced the following bill; which was referred to the Committee on Post Office and Civil Service

A BILL

To amend title 5, United States Code, to protect civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights, to prevent unwarranted governmental invasions of their privacy, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 71 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter III:

"SUBCHAPTER III—EMPLOYEE RIGHTS

"§ 7171. Policy

"It is the policy of the United States, as an employer, to assure that those officials of Executive agencies charged

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with administrative or supervisory responsibility recognize and protect the personal and individual rights, entitlements, and benefits of employees of, and applicants for employment in, Executive agencies.

"§ 7172. Definition

"For the purpose of this subchapter, 'official of an Executive agency' means—

"(1) an officer of an Executive agency;

"(2) an 'officer' of any of the 'uniformed services' as such terms are defined under section 101 of title 37; and

"(3) an individual acting or purporting to act under the authority of an officer referred to in paragraph (1) or (2) of this section.

"§ 7173. Employee rights

"(a) An official of an Executive agency may not—

"(1) require or request, or attempt to require or request, an employee of an Executive agency or an applicant for employment in an Executive agency to disclose his race, religion, or national origin, or the race, religion, or national origin of any of his forebears. This paragraph does not prohibit inquiry concerning—

"(A) the citizenship of an employee or applicant;

"(B) the national origin of an employee or

applicant when that inquiry is considered necessary or advisable to determine suitability for assignment to activities or undertakings related to the national security of the United States or to law enforcement or to activities or undertakings of any nature outside the United States;

"(C) the race, religion, or national origin of an employee or applicant when that matter is in issue in an allegation or complaint of discrimination; or

"(D) the race, religion, or national origin of an employee or applicant when (i) that matter is directly related to or an integral part of scientific research or program evaluation, (ii) appropriate safeguards have been instituted to preserve both the voluntary participation and the anonymity of the employee or applicant, and (iii) the inquiry has been approved by the Civil Service Commission.

This paragraph does not prohibit an inquiry made to satisfy the requirements of law providing preference for Indians in connection with functions or services affecting Indians;

"(2) coerce, require, or request, or attempt to coerce, require, or request, an employee of an Executive agency to attend or participate in a formal or informal meeting, assemblage, or other group activity held to

present, advocate, develop, explain, or otherwise cover in any way, by lecture, discussion, discourse, instruction, visual presentation, or otherwise, any matter or subject other than—

"(A) the performance of official duties to which that employee is or may be assigned in the Executive agency; or

"(B) the development of skills, knowledge, or abilities that qualify him for the performance of those official duties;

"(3) coerce, require, or request, or attempt to coerce, require, or request, an employee of an Executive agency to—

"(A) participate in any way in an activity or undertaking unless it is related to the performance of official duties to which the employee is or may be assigned in the Executive agency or related to the development of skills, knowledge, or abilities that qualify him for the performance of those official duties; or

"(B) make any report concerning any activity or undertaking of the employee not involving his official duties, except—

"(i) when there is reason to believe that the activity or undertaking conflicts with, or

adversely affects the performance of, his official duties; or

"(ii) as authorized to the contrary under paragraph (6) of this subsection.

This paragraph does not prohibit the use of appropriate publicity to inform employees of requests for assistance from public service programs or organizations;

"(4) require or request, or attempt to require or request, an employee of an Executive agency or an applicant for employment in an Executive agency to submit to an interrogation or examination or to take a polygraph or psychological test designed to elicit from the employee or applicant information concerning his personal relationship with any individual related to him by blood or marriage, his religious beliefs or practices, or his attitude or conduct with respect to sexual matters. This paragraph does not prohibit—

"(A) a physician from eliciting this information or authorizing these tests in the diagnosis or treatment of an employee or applicant in individual cases and not pursuant to general practice or regulation governing the examination of employees or applicants, when the physician considers the information necessary to enable him to determine

whether or not the employee or applicant is suffering from mental illness;

"(B) an official of an Executive agency from advising an employee or applicant of a specific charge of sexual misconduct made against the employee or applicant and giving him a full opportunity to refute the charge; or

"(C) an official of an Executive agency from eliciting, from an employee or applicant, in individual cases and not pursuant to general practice or regulation, information concerning the personal relationship of the employee or applicant with any individual related to him by blood or marriage, when that official considers the information necessary in the interest of national security;

"(5) coerce or require, or attempt to coerce or require, an employee of an Executive agency to invest his earnings in bonds or other obligations or securities issued by the United States or by an Executive agency, or to make donations to any institution or cause of any kind. This paragraph does not prohibit an official of an Executive agency from calling meetings and taking any action appropriate to inform an employee of the opportunity—

"(A) voluntarily to invest his earnings in

bonds or other obligations or securities issued by the United States or by an Executive agency; or

"(B) voluntarily to make donations to any institution or cause;

"(6) require or request, or attempt to require or request, an employee of an Executive agency (other than a Presidential appointee) to disclose his property or the property of any member of his family or household. This paragraph does not prohibit—

"(A) the Department of the Treasury or any other Executive agency from requiring an employee to make such reports as may be necessary or appropriate for the determination of his liability for taxes, tariffs, customs duties, or similar obligations to the United States; or

"(B) an official of an Executive agency from requiring an employee who participates (other than in a clerical capacity) in any determination with respect to—

"(i) a Government contract or grant;

"(ii) the regulation of non-Federal enterprise;

"(iii) the tax or other liability of any person to the United States; or

"(iv) a claim that requires expenditure of money of the United States;

from disclosing specific items of the property of that employee, or specific items of the property of any member of his family or household, which may tend to indicate a conflict of interest with respect to the performance of any of the official duties to which the employee is or may be assigned.

As used in this paragraph, 'property' includes items of property, income, and other assets, and the source thereof, liabilities, and personal and domestic expenditures;

"(7) prohibit or restrict, or attempt to prohibit or restrict, the exercise by an employee of an Executive agency of the right of reasonable communication with any official of his agency; or

"(8) remove, suspend or furlough from duty without pay, demote, reduce in rank, seniority, status, pay, or performance or efficiency rating, deny promotion to, relocate, reassign, discipline, or discriminate in regard to any employment right, entitlement, or benefit or any term or condition of employment of, an employee of an Executive agency, or threaten to commit any of those acts, by reason of—

"(A) the refusal or failure of the employee

to submit to or comply with any requirement, request, or action prohibited by this subsection; or

"(B) the exercise by the employee of any right, entitlement, benefit, or other protection granted or secured by this section and section 7175 of this title.

"(b) The provisions of subsection (a) of this section do not apply to—

"(1) the Central Intelligence Agency;

"(2) the National Security Agency;

"(3) the Federal Bureau of Investigation; or

"(4) any other Executive agency, or part thereof, as the President, in the interest of national security, may recommend to the Congress.

The exemption recommended by the President and transmitted to the Congress under paragraph (4) of this subsection shall become effective at the end of the first period of 30 calendar days of continuous session of the Congress after the date on which the recommendation is transmitted unless, between the date of transmittal and the end of the 30-day period, either the committee of the House of Representatives or the committee of the Senate to which the recommendation has been referred adopts a resolution which specifically disapproves the exemption so recommended and trans-

mitted. The continuity of a session is broken only by an adjournment of the Congress sine die. The days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 30-day period.

"(c) (1) An employee of, or an applicant for employment in, an Executive agency who claims to be aggrieved by a violation or threatened violation of subsection (a) of this section is entitled to file a grievance with the agency concerned not later than 15 days after the date of the violation or threatened violation.

"(2) If—

"(A) the decision on the grievance by the Executive agency is adverse to the employee or applicant; or

"(B) after 60 days from the date the grievance is filed the Executive agency has not issued a decision on the grievance;

the employee or applicant is entitled to file a complaint with the Board on Employee Rights not later than 15 days after the adverse decision or the expiration of the 60-day period, as the case may be.

"§ 7174. Board on Employee Rights

"(a) There is hereby established a Board on Employee Rights composed of three members appointed by the President, by and with the advice and consent of the Senate, one

of whom shall be a representative of a labor organization, or association of supervisors, representing employees. Not more than two members of the Board may be adherents of the same political party and none of the members of the Board may hold another office or position in the Government of the United States. The President shall from time to time designate one of the members as chairman.

"(b) The term of office of each member of the Board is 6 years. A member appointed to fill a vacancy occurring before the end of the term of office of his predecessor serves for the remainder of that term. When the term of office of a member ends, he may continue to serve until his successor is appointed and has qualified. The President may remove a member only for inefficiency, neglect of duty, or malfeasance in office.

"(c) Two members of the Board constitute a quorum for the transaction of business.

"(d) The Board may appoint and fix the pay of such officers, attorneys, and employees, and make such expenditures, as may be necessary to carry out its functions.

"(e) The Board shall prescribe rules and regulations necessary and proper to carry out its functions under this subchapter. To the extent consistent with efficient and economical administration and the attainment and achievement of justice in the consideration and disposition of matters be-

fore the Board, the rules and regulations shall provide for the use of depositions of witnesses. The rules and regulations shall also prescribe the maximum attorney's remuneration which may be awarded under section 7176 (c) of this title for services performed in connection with any matter before the Board, or the court, or both, under this subchapter. The Board may require, by subpena or otherwise, the attendance and testimony of witnesses, and the production of such books, records, correspondence, memoranda, papers, and documents, as it considers necessary.

"(f) (1) The Board shall receive and investigate written complaints, filed under section 7173 (c) of this title, from or on behalf of an employee or applicant claiming to be aggrieved by a violation or threatened violation of section 7173 (a) of this title. On receipt of such a complaint, the Board forthwith shall transmit a copy thereof to the head of the Executive agency concerned.

"(2) If the Board determines, within 10 days after its receipt of the complaint, that the facts alleged in the complaint do not constitute a violation or threatened violation of section 7173 (a) of this title with respect to the employee or applicant, it may dismiss the complaint without a hearing. If the Board dismisses the complaint, it shall notify all interested parties of the dismissal.

"(3) If the Board does not dismiss the complaint within 10 days after its receipt thereof, it shall—

"(A) conduct a hearing on the complaint within 30 days after its receipt of the complaint; and

"(B) furnish notice of the time, place, and nature of the hearing thereon to all interested parties.

If a hearing on the complaint is to be conducted—

"(i) the Executive agency concerned shall file an answer to the complaint and participate as a party in the hearing; and

"(ii) any official of that agency, who is alleged, in the complaint or during the course of the hearing, to have committed a violation or threatened violation of section 7173(a) of this title, is entitled, in his individual capacity, to file an answer to the allegation and participate as a party in the hearing.

"(4) The Board shall render its final decision with respect to any complaint within 30 days after the conclusion of its hearing thereon.

"(g) With the written consent of the employee or applicant concerned, filed with the Board, an officer or representative of not more than one labor organization, or association of supervisors, representing employees shall be given an opportunity to participate in each hearing conducted un-

der this section, through submission of written data, views, or arguments, and, in the discretion of the Board, with opportunity for oral presentation.

"(h) Insofar as consistent with the purposes of this section, the provisions of subchapter II of chapter 5 of this title apply to the rulemaking, hearing, and adjudication functions of the Board under this section.

"(i) If, after hearing, the Board determines that a violation of section 7173(a) of this title has not occurred or is not threatened, the Board shall state its determination and notify all interested parties of the determination. Each such determination, including a dismissal by the Board of the complaint without a hearing, constitutes a final decision of the Board for purposes of judicial review.

"(j) If, after hearing, the Board determines that a violation of section 7173(a) of this title has been committed or threatened by an official of an Executive agency not subject to chapter 47 of title 10, the Board –

"(1) shall immediately issue and cause to be served on the official an order requiring him to cease and desist from the unlawful act or practice which constitutes a violation;

"(2) shall immediately endeavor to eliminate any such unlawful act or practice by informal methods of conference, conciliation, and persuasion; and

"(3) may, without regard to chapter 75 of this title—

"(A) (i) in the case of the first offense by such an official, other than any official appointed by the President, by and with the advice and consent of the Senate, issue an official reprimand against the official or order the suspension without pay of the official from the position or office held by him for a period of not to exceed 15 days; and

"(ii) in the case of a second or subsequent offense by such official, order the suspension without pay of the official from the position or office held by him for a period of not less than 15 nor more than 60 days or, when the Board considers such second or subsequent offense to be sufficiently serious to warrant such action, order the removal of the official from the position or office; and

"(B) in the case of any offense by such an official appointed by the President, by and with the advice and consent of the Senate, transmit a report concerning the violation to the President and the Congress.

A reprimand or order under subparagraph (3) (A) of this subsection shall not become effective until the expiration of the period within which the official aggrieved by the repri-

mand or order may file a petition for review or complaint for trial de novo or, if such a petition or complaint is filed, until the court makes a final disposition of the case.

"(k) If, after hearing, the Board determines that a violation of section 7173(a) of this title has been committed or threatened by an official of an Executive agency subject to chapter 47 of title 10, the Board shall—

"(1) submit a report thereon to the Secretary of the military department concerned;

"(2) endeavor to eliminate any unlawful act or practice which constitutes such a violation by informal methods of conference, conciliation, and persuasion; and

"(3) refer its determination and the record in the case to the Secretary concerned, as defined in section 101 of title 10, who shall take immediate steps to dispose of the matter under chapter 47 of title 10.

However, the immediate steps referred to in paragraph (3) of this subsection shall not be taken by the Secretary concerned until the expiration of the period within which the official aggrieved by the reference to the Secretary by the Board under that paragraph may file a petition for review or complaint for trial de novo or, if such a petition or complaint is filed, until the court makes a final disposition of the case.

"(l) (1) The Board shall submit, not later than March 31 of each year, to the President for transmittal to the Con-

gress a report on its activities under this subchapter during the immediately preceding calendar year, including—

"(A) the types and kinds of complaints filed with the Board;

"(B) the determinations, orders, and actions of the Board with respect to those complaints;

"(C) the name of each official of an Executive agency with respect to whom any action was taken or penalty imposed under subsection (j) of this section;

"(D) the nature of that action or penalty; and

"(E) such other matters as the Board considers relevant and appropriate to provide full and complete information with respect to the operation and administration of this subchapter.

"(2) The Secretary of each military department shall submit, not later than March 31 of each year, to the President for transmittal to the Congress, a report on his activities under this subchapter during the immediately preceding calendar year, including—

"(A) the disposition, under chapter 47 of title 10, of matters referred to the Secretary under paragraph (3) of subsection (k) of this section;

"(B) the name of each official of an Executive agency with respect to whom any action was taken or penalty imposed under such chapter;

"(C) the nature of that action or penalty; and

"(D) such other matters as the Secretary considers relevant and appropriate to provide full and complete information with respect to his activities under this subchapter.

"§ 7175. Judicial review

"(a) An employee, or applicant for employment, aggrieved by a final determination or order of the Board on Employee Rights may file, within 30 days after the date of that determination or order, in the district court of the United States for the judicial district in which the alleged violation or threatened violation of section 7173(a) of this title occurred or in which his official duty station was located at the time of the alleged violation or threatened violation—

"(1) a petition for a review of the determination or order; or

"(2) a complaint for a trial de novo on the violation or threatened violation of section 7173(a) of this title, which was the subject of the determination or order of the Board.

The petition or complaint shall name as defendant both the Executive agency concerned and the Board on Employee Rights. An official, or former official, of an Executive agency—

"(A) with respect to whom, in connection with the

petition for review, there is involved an alleged violation or threatened violation by him of section 7173 (a) of this title;

"(B) with respect to whom the complaint for a trial de novo, or the trial pursuant to the complaint, involves an alleged violation or threatened violation by him of section 7173 (a) of this title; or

"(C) aggrieved by a final determination or order of the Board, or part or application thereof, in connection with such alleged violation or threatened violation;

is entitled, in his individual capacity, to file an answer with respect to such violation or threatened violation and participate as a party in the proceedings.

"(b) If, after the expiration of 30 days after the date of a final determination or order of the Board, a petition or complaint with respect to such determination or order has not been filed under subsection (a) of this section, an official or former official of an Executive agency aggrieved by that determination or order, or part or application thereof, may file, within 30 days after the expiration of such 30-day period, in the district court of the United States for the judicial district in which the alleged violation or threatened violation of section 7173 (a) of this title occurred or in which his official duty station was located at the time of the alleged

violation or threatened violation, a petition for review of the determination or order, or part or application thereof.

"(c) A petition for review or complaint for trial de novo filed under subsection (a) or (b) of this section shall name as defendant both the Executive agency concerned and the Board, and a copy thereof shall be served on the Executive agency concerned and the Board.

"(d) When a copy of a petition for review is served on the Board, a certified copy of the record on which the final determination or order of the Board is based shall be filed with the court. On filing of a petition with the court, and in its consideration of the petition, the court shall have jurisdiction to—

"(1) issue such restraining order, interlocutory injunction, permanent injunction, or mandatory injunction, as may be necessary and appropriate with respect to any determination or order, or part or application thereof, made by the Board which is under review;

"(2) affirm, modify, or set aside any such determination or order, or part or application thereof;

"(3) require the Board to make any determination or order which it is authorized to make under section 7174(j) of this title, but which it has failed or refused to make; and

"(4) remand the matter to the Board for appropri-

ate action by the Board and the Executive agency concerned in accordance with the decision of the court. The reviewing court shall set aside any finding, conclusion, determination, or order of the Board as to which a complaint is made that is unsupported by substantial evidence on the record considered as a whole.

"(e) On the filing of a complaint for a trial de novo, the court shall have jurisdiction to—

"(1) try and determine the action, irrespective of the existence or amount of pecuniary injury done or threatened; and

"(2) issue such restraining order, interlocutory injunction, permanent injunction, or mandatory injunction, or enter such other judgment or decree, as may be necessary or appropriate to prevent the threatened violation or to afford the plaintiff and others similarly situated complete relief against the consequences of any violation. The court shall decide all questions of law in any action under this subsection. The court, upon application by either party, shall order a trial by jury of the issues in any action under this subsection.

"(f) With the written consent, filed with the court, of an employee, applicant for employment, official of an Executive agency, or former official of an Executive agency aggrieved by a final determination or order of the Board, who

is entitled to file a petition for review, a complaint for a trial de novo, or answer, or to participate as a party in any proceeding, under this section, not more than one labor organization, or association of supervisors, representing employees may intervene in connection with the review or the trial de novo.

"§ 7176. General provisions

"(a) An individual called on to participate in any phase of an administrative or judicial proceeding under this subchapter shall be free from restraint, coercion, interference, intimidation, or reprisal in the course of, or because of, his participation.

"(b) An employee or an official of an Executive agency who is a party to the action, summoned, or assigned by his agency to appear, including an appearance to give his deposition, before the Board on Employee Rights, or before the appropriate court, in connection with any matter before the Board or the court under this subchapter, shall not incur a loss of or reduction in any right, entitlement, or benefit as an employee or official of that agency. A period of such absence within his regularly scheduled tour of duty is service performed by the employee or official while on official business. Travel by the employee or official during a period of such absence, whether or not performed within his regularly scheduled tour of duty, is travel on official business.

"(c) On written application certifying his expenses and charges filed with the Board on Employee Rights by an attorney representing a party to the action who has appeared before the Board, or the appropriate court, in connection with any matter before the Board, or the court, or both, under this subchapter, which has been determined by the Board or the court, in favor of the party represented by the attorney, the Board may allow, at the conclusion of the representation and in accordance with the regulations prescribed under section 7174(c) of this title, such remuneration to the attorney as it considers reasonable and proper and shall certify to the Executive agency concerned the amount of the attorney's remuneration granted by it. The agency shall pay the certified amount of such remuneration, in accordance with the following provisions:

"(1) the agency shall charge against such certified amount of remuneration all sums previously paid to the attorney by the party represented;

"(2) if the sums previously paid to the attorney by that party for such representation equal or exceed the certified amount of the attorney's remuneration, the agency shall reimburse that party in that certified amount; and

"(3) if the sums previously paid to the attorney by that party for such representation are less than that

certified amount, the agency shall reimburse that party in the amount paid by that party and shall pay to the attorney an amount equal to the difference between the certified amount of the attorney's remuneration and the aggregate of the sums previously paid by that party to the attorney.".

(b) The analysis of chapter 71 of title 5, United States Code, is amended by adding the following at the end thereof:

"SUBCHAPTER III—EMPLOYEE RIGHTS

"Sec.
"7171. Policy.
"7172. Definition.
"7173. Employee rights.
"7174. Board on Employee Rights.
"7175. Judicial review.
"7176. General provisions.".

(c) Section 5316 of title 5, United States Code, is amended by adding at the end thereof:

"(131) Members of the Board on Employee Rights (3).".

SEC. 2. Subchapter III of chapter 71 of title 5, United States Code, as added by this Act, shall apply only with respect to acts, violations, threatened violations, grievances, and other similar matters covered by such subchapter which arise or occur on or after such date following the date of enactment of this Act as the Board on Employee Rights, established by the amendments made by the first section of this Act, shall prescribe but in no event later than the

one hundred and eightieth day following such date of enactment.

SEC. 3. Notwithstanding section 7174 of title 5, United States Code, as added by the first section of this Act, the terms of office of the three members first appointed to the Board on Employee Rights shall end, as designated by the President, one at the end of 2 years, one at the end of 4 years, and one at the end of 6 years.

92D CONGRESS
1ST SESSION

H. R. 11150

A BILL

To amend title 5, United States Code, to protect civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights, to prevent unwarranted governmental invasions of their privacy, and for other purposes.

By Mr. HANLEY, Mr. BRASCO, Mr. UDALL, Mr. CHARLES H. WILSON, Mr. GALIFIANAKIS, Mr. MATSUNAGA, and Mr. MURPHY of New York

OCTOBER 7, 1971
Referred to the Committee on Post Office and Civil Service

Approved For Release 2005/08/03 : CIA-RDP81-00818R000100050001-8

U.S. House of Representatives
COMMITTEE ON ARMED SERVICES
Washington, D.C. 20515

NINETY-SECOND CONGRESS

F. EDWARD HÉBERT, CHAIRMAN

October 21, 1971

Honorable Thaddeus J. Dulski
Chairman
Post Office and Civil Service Committee
House of Representatives
Washington, D. C.

Dear Mr. Chairman:

I understand that your Committee now has under consideration H. R. 11150, a bill "To protect civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights, to prevent unwarranted governmental invasions of their privacy, and for other purposes."

I was gratified to learn that certain Federal agencies under the jurisdiction of the Committee on Armed Services including the Central Intelligence Agency and the National Security Agency are among the sensitive Federal agencies which have been specifically exempted from application of the provisions of the bill. This action, as recommended by your Subcommittee, is sound. I therefore trust that this particular provision in the bill will remain unchanged.

As you know, the administration of the Central Intelligence Agency is governed by the National Security Act of 1947 and the Central Intelligence Agency Act of 1949. This legislation imposes on the Director of Central Intelligence responsibility ". . . for protecting intelligence sources and methods from unauthorized disclosure. . ." and provides that "In the interests of the security of the foreign intelligence activities of the United States . . . the Agency shall be exempted from the provisions . . . of any . . law which require(s) the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency . . .".

The reasons for imposing this responsibility on the Director of Central Intelligence, and for granting him this exemption, I believe are evident. It is a well-established fact that ever-alert hostile intelligence services assign the highest priority to identifying and exploiting personal vulnerabilities of our own intelligence officers. This is not only because of their access to the most sensitive kinds of information, but also because their work frequently takes them to lonely and hostile areas where they are exposed to a variety of pressures and provocations.

There are two main defenses against these hazards. First, it is essential that intelligence personnel receive the most thorough screening and assessment to ensure the selection of the right man for the job. Second, since good security depends largely on the loyalty and morale of its employees, the Agency's personnel policies must be carried out with the utmost regard for the personal dignity and privacy of the individual. I am convinced that the Agency management fully appreciates this, realizing that it could not carry out its vital mission, or preserve the security of its sensitive activities, if the fairness and reasonableness of its personnel policies did not have the confidence of its employees. Nevertheless, the authority of the Director over the Agency's personnel policies, to be commensurate with his responsibilities, must be undiluted.

The considerations relating to the Central Intelligence Agency apply with equal force and effect to the National Security Agency as well as certain other agencies within the Department of Defense.

I would appreciate very much if the views I have expressed in this letter are made available to the members of your Committee at the time they consider the Subcommittee's recommendation on H. R. 11150.

With best wishes, I remain

Sincerely,

F. Edw. Hebert
Chairman

FEH:fsk

Approved For Release 2005/08/03 : CIA-RDP81-00818R000100050001-8

2 DEC 1971

S. 1438 - Ervin Bill

Background

1. S. 1438, the so-called invasion of privacy bill, was reintroduced in the 92nd Congress by Senator Ervin. The bill was identical to the version of the Ervin bill approved by the Senate in the 91st Congress with only partial exemptions for CIA and NSA and a complete exemption for FBI. On 21 May 1971 the Director wrote to Senator Ervin to request a complete exemption for CIA. The Agency's position was cleared with OMB. A copy of the Director's letter to Senator Ervin was also sent to Senator Eastland, the Chairman of the Judiciary Committee.

Senate Action

2. The full Senate Judiciary Committee has approved S. 1438 as introduced. This action was taken in Executive Session and the Committee report on the bill to the Senate has not been printed as of this date.

3. In the interest of verifying the facts in anticipation of the possibility of further Agency action in the Senate, contact was made this date with Senator Ervin's Constitutional Rights Subcommittee and we were informed by the staff member responsible for the bill (Marcia MacNaughton) that:

a. S. 1438 has been ordered reported out by the full Judiciary Committee and the reported out version of the bill will be available shortly.

b. The report on the bill has not yet been printed but will be available shortly.

c. The substantive comments in the report will be identical to those appearing in last year's report (S. Report 91-873) which on page three makes reference to the Director's testimony before the Subcommittee on 22 July 1969 and concludes "On the basis of this testimony and after a number of meetings of subcommittee members with officials of the Central Intelligence Agency, the National Security Agency, and the Federal Bureau of Investigation, the language contained in the committee amendments was drafted and meets with the approval of the Directors of those agencies." (underscoring supplied)

d. The report will not make reference to the Director's position concerning the need for a complete exemption as expressed in his letter to Senator Ervin of 21 May 1971. (On reflection MacNaughton realized the conflict between the Director's letter and the statement in the draft report quoted in (c) above and she said she would make an appropriate deletion.)

4. MacNaughton sees us as bearing principal responsibility for the need for legislation such as this, appears to sincerely believe that they have been accommodating to our interests and, believes that the bill as is will be favorably acted upon by the Senate and that our problem will be dealt with in conference.

CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D. C. 20505

OFFICE OF THE DIRECTOR

21 May 1971

The Honorable Sam J. Ervin, Jr.
Chairman, Subcommittee on
Constitutional Rights
Committee on the Judiciary
United States Senate
Washington, D. C. 20510

My dear Mr. Chairman:

I have noted that on 1 April 1971 you introduced S. 1438, a bill "to protect the civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy."

When an identical bill, S. 782, was under consideration in the last Congress, you were good enough to meet with Larry Houston and Jack Maury, of my staff, to hear our explanation of some of the problems which the bill might create for us. You also gave me an opportunity to appear before your Subcommittee for the same purpose. I much appreciate your courtesy on these occasions, and I am grateful for the efforts of your Subcommittee staff to work out some changes in the original version of S. 782 designed to solve our problems.

Despite these changes our recent examination of this legislation has served only to confirm our judgment that it still falls considerably short of meeting the Agency's basic requirements. I am therefore convinced of the necessity for a complete exemption for this Agency, and I trust you will favorably consider my request for such an exemption. Larry Houston and Jack Maury are of course available at your convenience if you think further discussions would be useful.

Sincerely,

Richard Helms

Richard Helms
Director

Approved For Release 2005/08/03 : CIA-RDP81-00818R000100050001-8

U.S. House of Representatives
COMMITTEE ON POST OFFICE AND CIVIL SERVICE
207 CANNON HOUSE OFFICE BUILDING
Washington, D.C. 20515

February 23, 1972

Honorable George H. Mahon
Chairman, Committee on Appropriations
U.S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

I have your letter of February 17, expressing concern about the imposition on the security agencies of H.R. 11150 regarding the protection of Federal employees' rights to privacy.

As you point out, the provisions of the bill at the present time grant full exemption for Central Intelligence Agency and other sensitive agencies.

I support the exemption of our security agencies from the bill and will oppose any amendments should they be offered which would subject the security agencies to any provisions of the legislation.

I will advise the members of the Committee of your position in the event the need arises during our markup session on the bill.

With kind regards,

Sincerely yours,

THADDEUS J. DULSKI
Chairman

Approved For Release 2005/08/03 : CIA-RDP81-00818R000100050001-8

File

CIVIL RIGHTS COMMISSION

HR 12652

HEARING

BEFORE THE

SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-SECOND CONGRESS

SECOND SESSION

JUNE 16, 1972

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

80-401 O WASHINGTON : 1972

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HUGH SCOTT, Pennsylvania

LAWRENCE M. BASKIR, *Chief Counsel and Staff Director*
LEWIS B. SNIDER, *Assistant Counsel*

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CIVIL RIGHTS COMMISSION

FRIDAY, JUNE 16, 1972

U.S. SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:55 a.m., in room 2228, New Senate Office Building, Senator Sam J. Ervin, Jr., chairman, presiding.

Present: Senator Ervin.

Also present: Lawrence M. Baskir, chief counsel and staff director, and Britt Snider, counsel.

Senator ERVIN. We will now take up the hearings on S. 3121 and H.R. 12652.

At this time, the Subcommittee on Constitutional Rights will begin its consideration of two almost identical bills, S. 3121 and H.R. 12652, which extend the life of the Civil Rights Commission for 5 years, expand its jurisdiction to include matters of sex discrimination, and provide for its authorization. The bills differ only in that S. 3121 contains an open-ended authorization provision which would effectively eliminate any opportunity for legislative oversight, while H.R. 12652 provides an exceedingly generous $6.5 million for the Commission in fiscal year 1973 and $8.5 million in fiscal year 1974 and the succeeding 3 fiscal years.

The text of the bills will be printed in the hearing record.

(S. 3121 and H.R. 12652 follows:)

92D CONGRESS
2D SESSION

S. 3121

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3, 1972

Mr. HART (for himself, Mr. BAYH, Mr. BOGGS, Mr. COOK, Mr. DOMINICK, Mr. GRIFFIN, Mr. HARRIS, Mr. HRUSKA, Mr. HUMPHREY, Mr. JACKSON, Mr. JAVITS, Mr. KENNEDY, Mr. MCGEE, Mr. MATHIAS, Mr. MUSKIE, Mr. NELSON, Mr. PELL, Mr. PERCY, Mr. RANDOLPH, Mr. RIBICOFF, Mr. SCHWEIKER, Mr. SCOTT, Mr. STAFFORD, Mr. STEVENS, Mr. STEVENSON, Mr. TUNNEY, and Mr. WILLIAMS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To extend the Commission on Civil Rights for five years, to expand the jurisdiction of the Commission to include discrimination because of sex, to authorize appropriations for the Commission, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 2. Section 102 (j) of the Civil Rights Act of 1957 (42 U.S.C. 1975a (j) ; 71 Stat. 634), as amended, is further amended by striking therefrom the first and second sentences and substituting therefor the following: "A witness attending any session of the Commission shall be paid the same fees

and mileage that are paid witnesses in the courts of the United States."

SEC. 3. Section 103 (a) of the Civil Rights Act of 1957 (42 U.S.C. 1975b (a) ; 71 Stat. 635), as amended, is further amended by striking therefrom "the sum of $100 per day for each day spent in the work of the Commission," and substituting therefor "a sum equivalent to the compensation paid at level IV of the Federal Executive Salary Schedule. pursuant to section 5315 of title 5, United States Code, prorated on a daily basis for each day spent in the work of the Commission."

SEC. 4. Paragraph (1) of subsection (a) of section 104 of the Civil Rights Act of 1957 (42 U.S.C. 1975c (a) ; 71 Stat. 635), as amended, is further amended by inserting immediately after "religion," the following: "sex," and paragraphs (2), (3), and (4) of subsection (a) of such section 104 are each amended by inserting immediately after "religion," the following: "sex".

SEC. 5. Section 104 (b) of the Civil Rights Act of 1957 (42 U.S.C. 1975c (b) ; 71 Stat. 635), as amended, is further amended by striking therefrom "January 31, 1973" and substituting therefor "the last day of fiscal year 1978."

SEC. 6. Section 105 of the Civil Rights Act of 1957 (42 U.S.C. 1975d; 71 Stat. 636), as amended, is further amended as follows:

In section 105(a) by striking out in the last sentence thereof "as authorized by section 15 of the Act of August 2, 1946 (60 Stat. 810; 5 U.S.C. 55a), but at rates for individuals not in excess of $100 per diem," and substituting therefor "as authorized by section 3109 of title 5, United States Code, but at rates for individuals not in excess of the daily equivalent paid for positions at the maximum rate for GS–15 of the General Schedule under section 5332 of title 5, United States Code".

SEC. 7. Section 106 of the Civil Rights Act of 1957 (42 U.S.C. 1975c; 71 Stat. 636), as amended, is further amended to read as follows:

"SEC. 106. There are hereby authorized to be appropriated, such sums as are necessary to carry out the provisions of this Act."

92D CONGRESS
2D SESSION

H. R. 12652

IN THE SENATE OF THE UNITED STATES

MAY 2, 1972

Read twice and referred to the Committee on the Judiciary

AN ACT

To extend the life of the Commission on Civil Rights, to expand the jurisdiction of the Commission to include discrimination because of sex, to authorize appropriations for the Commission, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 102 (j) of the Civil Rights Act of 1957 (42 U.S.C. 1975a (j) ; 71 Stat. 635), as amended, is further amended by striking therefrom the first and second sentences and substituting therefor the following: "A witness attending any session of the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States."

II

80-401 O—72——2

SEC. 2. Section 103 (a) of the Civil Rights Act of 1957 (42 U.S.C. 1975b (a) ; 71 Stat. 635), as amended, is further amended by striking therefrom "the sum of $100 per day for each day spent in the work of the Commission," and substituting therefor "a sum equivalent to the compensation paid at level IV of the Federal Executive Salary Schedule, pursuant to section 5315 of title 5, United States Code, prorated on a daily basis for each day spent in the work of the Commission,".

SEC. 3. Paragraph (1) of subsection (a) of section 104 of the Civil Rights Act of 1957 (42 U.S.C. 1975c (a) ; 71 Stat. 635), as amended, is further amended by inserting immediately after "religion," the following: "sex," and paragraphs (2), (3), and (4) of subsection (a) of such section 104 are each amended by inserting immediately after "religion" the following: ", sex".

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SEC. 6. Section 106 of the Civil Rights Act of 1957 (42 U.S.C. 1975e; 71 Stat. 636), as amended, is further amended to read as follows:

"SEC. 106. For the purposes of carrying out this Act, there is authorized to be appropriated for the fiscal year ending June 30, 1973, the sum of $6,500,000, and for each fiscal year thereafter through June 30, 1978, the sum of $8,500,000."

Passed the House of Representatives May 1, 1972.

Attest: W. PAT JENNINGS,

Clerk.

Senator ERVIN. In 1957, over my opposition, the Civil Rights Commission came into being. Its objectives were to assess the laws and policies of the Federal Government in regard to denials of equal protection under the law, to report its findings and recommendations to the President within 2 years, and then disappear. It is now 1972, that particular report has never been made, and the Commission is here again asking for large sums of public money and yet another extension.

Congress has extended the life of the Commission five times since its inception in 1957. Its permanent staff has grown from 87 in 1959 to 176 in 1972. An additional 40 permanent positions have been requested for fiscal year 1973, and no one knows how many employees it will have by 1978. Amounts appropriated for the work of the Commission have swelled from an original appropriation of $777,000 in 1959 to almost $4 million in fiscal year 1972. It is interesting to observe that when the Commission was subject to 1- or 2-year extensions, as they were prior to 1964, increases in appropriations and staff were kept under control. But, as the extensions have become longer, the appropriations and staff have risen in dramatic proportion. The whole experience illustrates the proposition that the longer an agency stays in existence, and the further it gets from congressional review, the more deeply entrenched it becomes and the more extravagant with money. There is nothing more permanent than a temporary Government agency.

We are now being asked to extend the Commission for another 5 years which, if done, means that an agency whose demise was expected by 1959 will live to be over 20 years old and presumably even longer.

I do not say that there is no problem with constitutional rights or that it is no longer necessary to insure that such rights receive the safeguards of the law. On the contrary, there will always be such a need. I am saying that this should not necessitate the indefinite existence of the Commission at even greater sums of money.

I objected to the establishment of the Civil Rights Commission in 1957 and I object to its extension now because it duplicates the activities of other Government agencies charged with investigating and enforcing civil rights statutes and Executive orders dealing with discrimination under the law. The Commission itself has no power to resolve complaints it receives. It must refer them to appropriate agencies for enforcement. The Commission can only conduct studies and make recommendations.

Given the limited nature of what the Commission can do and the modest nature of its contributions, it is with some skepticism that I view the proposal to extend further the ambit of the Commission's jurisdiction to a special area of equal protection—that of sex discrimination.

Here, in particular, there already exists a considerable bureaucratic framework to investigate and put an end to governmental and private practices which discriminate on the basis of sex. The Equal Employment Opportunity Commission is charged under Title VII of the 1964 Civil Rights Act with enforcing the prohibitions against sex discrimination by employers, labor unions, employment agencies, and apprentice programs. The Civil Service Commission enforces Executive Order 11246 which prohibits sex discrimination in Federal employment. The Labor Department enforces the same order with regard to

Government contracts, and enforces the provisions of the Equal Pay Act of 1963. It also has a Women's Bureau which collects information concerning the economic and educational status of women. HEW, HUD, and the Office of Education are also involved with investigating sex discrimination in the governmental programs they administer. And, of course, the Justice Department is charged with bringing suit to enforce the laws which these agencies are implementing.

Finally, if the equal rights amendment to the Constitution is ratified by the States, any person in America may go into court to challenge sexually discriminating laws or practices as a violation of his or her constitutional rights.

But we are told we need still more. We are told that we need to expand the jurisdiction of the Civil Rights Commission to make more studies, more reports, and more recommendations on the question of sex discrimination.

I wonder myself if the Commission's present jurisdiction to investigate denials of equal protection to members of racial, ethnic, and religious minorities is not broad enough to include discriminatory practices against minority women. The Commission says it has already done some work in this area. If so, how much will be added by this new grant of jurisdiction? In light of the mammoth costs projected by the Commission, and the work the Commission says it has yet to do in the areas of its present jurisdiction, perhaps there is a danger that these new responsibilities it seeks will seriously interfere with its performance of existing ones. When I consider the continuing plight of American Indians, which the Commission has just recently begun to notice, I find it hard to believe that more than 25 percent of its funds must be directed to problems of non-minority women.

In fiscal year 1972, appropriations for the Commission totalled $3,770,000. Out of this, the Commission investigated denials of the rights of black Americans, Puerto Ricans, Chicanos, American Indians, and presumably other ethnic and religious minorities. It now asks for $1 million in fiscal year 1973 and $2.25 million for fiscal years 1974–78 to be spent solely on sex discrimination. Based on what is spent protecting the rights of other minority groups, these figures are either grossly inflated or clearly disproportionate.

Looking at the total authorizations called for in H.R. 12652, the figure of $6.5 million for fiscal year 1973 is a 62 percent increase over the ceiling established for fiscal year 1972. The $8.5 million called for in the succeeding 4 fiscal years represents an increase of 112 percent over fiscal year 1972. All told, the cost of the Civil Rights Commission for fiscal years 1973–78 would be, by the Commission's own estimates, $40.5 million. It is rather startling that the total amount of appropriations for the Commission to date, from its creation in 1957 to the present, has been a little over $27 million. Thus, the Commission is asking the Congress to authorize $13 million more over the next 5 years than what has been spent for the work of the Commission for the last 15.

This vast, uncalled-for expenditure strikes me as the most objectionable provision of H.R. 12652. It cannot be justified by the inclusion of sex discrimination in the Commission's jurisdiction by any stretch of the imagination. On the contrary, the monetary limits within which the Commission has worked in the past indicate the extravagant na-

ture of the estimate. Even without the inclusion of sex discrimination and the costs of H.R. 12652, the Commission is seeking an increase of over $800,000 for its work in fiscal year 1973—itself a substantial increase over its appropriation of $3,770,000 in fiscal year 1972.

All this comes at a time, I might add, when the Federal budget deficit has reached $39 billion and predictions are that it will continue to worsen. To be sure, some increase in costs might be expected, but quantum leaps having as little justification as this one are both unwise and inconsistent with the "belt-tightening" in evidence in other Federal agencies.

I do not feel that the open-ended authorization found in S. 3121 is any solution to the problem either. The Commission, in the first 10 years of its existence, operated under such a provision and the result was a mushrooming program accompanied by mushrooming costs. Given the apparent bent of the Commission now, I fear we may experience the same mushrooming effect in greater proportions with even less justification if the matter of appropriations were left between the Commission and the Office of Management and Budget.

If the Commission is to remain with us, it is my feeling that the Congress should limit its appropriations to an amount reasonably calculated to allow the Commission to perform the functions for which it was established. We have only the past and a little commonsense to rely on. And it seems to me that the authorizations asked for in H.R. 12652 fail on both counts.

It is a matter I hope the subcommittee and our witnesses will devote some time to today.

Will counsel call the first witness?

Mr. BASKIR. Mr. Chairman, our first witness this morning is Rev. Theodore M. Hesburgh, Chairman, Civil Rights Commission.

He is accompanied by Mrs. Frankie Freeman, also a member of the Civil Rights Commission.

Senator ERVIN. And Mr. Rankin.

Mr. POWELL. And John Powell, General Counsel of the Commission.

Senator ERVIN. I welcome you all to the subcommittee, and we will be glad to hear you in any order which you care to present your views.

STATEMENT OF REV. THEODORE M. HESBURGH, C.S.C., CHAIRMAN, CIVIL RIGHTS COMMISSION, ACCOMPANIED BY MRS. FRANKIE M. FREEMAN, COMMISSIONER; ROBERT RANKIN, COMMISSIONER; JOHN POWELL, GENERAL COUNSEL; AND JOHN A. BUGGS, ACTING STAFF DIRECTOR, CIVIL RIGHTS COMMISSION

Reverend HESBURGH. Senator Ervin, Mr. Chairman, and members of the committee and Subcommittee on Constitutional Rights, I am Theodore M. Hesburgh, Chairman of the U.S. Commission on Civil Rights. I wish to thank you for this opportunity to testify on S. 3121 and H.R. 12652, legislation to extend the life of the Commission on Civil Rights, expand its jurisdiction to include sex discrimination and to authorize appropriations for the Commission. With me today are my fellow Commissioners, Mrs. Frankie M. Freeman, of St. Louis, and Robert Rankin, professor emeritus of political science, Duke University.

We also have our acting staff director, Mr. John Buggs, and our General Counsel, Mr. John Powell.

I share with Dr. Rankin the privilege of having served on the Commission under four Presidents. This results, in part, from the recognition of Congress and of every President since 1957 that the critical domestic problems of civil rights require approaches above political partisanship. Above all, Congress recognized in enacting Title I of the Civil Rights Act of 1957 that the monitor of federal civil rights policy should neither be a creature of the executive nor of the legislative branch, but should be equally responsible to both. Therefore, we report to both the executive and legislative branches and we are nonpartisan.

Since the establishment of the Commission in 1957 we have seen a proliferation of study commissions of various kinds—each responsible for reporting on some issue of national importance. We share some of the traits of such commissions. We, like they, were created as a substitute response to critical domestic problems. We enforce no laws. We cannot redress individual grievances, no matter how serious. Our power, in short, is extremely limited.

Although the Commission on Civil Rights is similar to other study groups in many ways, we are unique in other ways.

First, the Commission on Civil Rights, as I have mentioned, reports to both the executive and legislative branches. Most study commissions report only to the President.

A second unique feature of the Commission on Civil Rights is the broadness of its mandate. Other study commissions have tended to have specific, often narrow mandates. The mandate of the Commission on Civil Rights, however, extends to the limits of the equal protection clause of the Constitution with respect to invidious distinctions based on race, color, religion or national origin. This gives the Commission considerable latitude for moving into problem areas that need exploring. Moreover, the Commission does not have to wait for a specific request in order to move, although such requests always are welcome. The Commission can, and does, schedule its activities on the basis of its experience and its knowledge of what most urgently needs attention in the field of civil rights.

A third unique feature of the Commission on Civil Rights is its continuing existence. This continuity has enabled the Commission to follow up on its findings and recommendations—a highly important function about which I shall say more.

Instead of going out of existence after publishing one report, as do many advisory and study commissions, the Commission on Civil Rights continues to operate. The Commission has been extended five times by Congress. This continuity of existence has enabled the Commission to produce a steady stream of reports and other activities directed toward the myriad civil rights problems facing the Nation. We are able to persist in seeking implementation of our recommendations. For example, we first recommended an equal employment opportunity commission with enforcement powers in 1961. Since that time we reiterated our basic recommendations, published supporting studies and focused critical attention on the Federal Government's performance in the equal employment field. This year, 11 years after our initial report on employment, legislation granting enforcement powers directly to the Equal Employment Opportunity Commission was passed.

The Commission on Civil Rights is unique among study commissions in having the active assistance of State advisory committees, which Congress authorized to be established by the Commission in each State and the District of Columbia. Our State committees have been the eyes and ears of the Commission away from Washington. Their reports have been valuable sources of information to the Commission and have had substantial effect on civil rights issues at the State and local level. We see our State committees as a vital link in developing and strengthening civil rights in the communities, on the streets, in towns and cities, and in State capitals across the land.

Our continuing existence over a period approaching 15 years has given us considerable background and expertise in the field of civil rights. And, as I have suggested, it has enabled us to go beyond making recommendations into the highly important matter of following up on recommendations to see how well they are carried out. As more laws have been enacted, our primary focus has shifted from the need for more legislation to the question of effective implementation. Our views, criticisms, and suggestions have been solicited by this subcommittee and by other committees of Congress, by the Executive, and by those agencies of Government charged with civil rights enforcement responsibilities.

Furthermore, civil rights are no longer regional issues. They truly are nationwide. The day of the sectional approach to solving civil rights problems rapidly is coming to a close. The Commission on Civil Rights has often expressed dismay over Federal approaches to civil rights which tend to limit enforcement of civil rights principally to one region or tend to give the appearance of ignoring the existence of extremely serious civil rights problems nationwide. I might point out that our 1966 "Report on Racial Isolation in the Public Schools" received a cool reception in large part because we suggested that school segregation was not solely a Southern problem but existed in every city in our land.

These shifts in emphasis to monitoring enforcement of civil rights and to treating civil rights as a national, not a regional problem, have required a commensurate expansion of staff and intensity of effort. A voting rights study conducted in five or six States is less expensive than a housing segregation study across the Nation. A study of the extent of segregated schools in the South in 1966–67 was more simple and far less expensive than a study of the educational problems of Mexican-American students or of racial isolation in the public schools nationwide. When the Commission appraised the Federal civil rights performance in 1961 only the Department of Justice and an extremely limited contract compliance operation were involved. Two years ago we undertook to assess the entire State of Federal civil rights enforcement. We reviewed over 40 departments and agencies. Our study, "The Federal Civil Rights Enforcement Effort" issued in 1970 was one of the largest and most impressive in our history. We have issued two followup reports to that study and plan others. Under the persistent prodding of our monitoring program, a number of Federal agencies, including the Office of Management and Budget have made important and significant improvements in their civil rights enforcement efforts.

Against that backdrop, Mr. Chairman, let me outline briefly some other recent activities of the Commission.

The most complete set of educational data ever collected about any American minority other than blacks is being compiled by the Commission in a study of education for Mexican Americans. Three reports already have been issued as a result of this study and three others are planned.

In recent years the Commission has been giving increasing attention to the long-neglected problems of American Indians, Puerto Ricans, and other minorities. We are opening new field offices in the Midwest—if Denver can be considered Midwest—where many American Indians reside, and issuing new publications for the purpose of dealing with the civil rights problems of that group.

I know of your special interest and concern about the problems of American Indians. The Indian bill of rights authored by you and originally reported from this Subcommittee on Constitutional Rights is a landmark contribution in this area. As you know, our clearinghouse publication, the "American Indian Civil Rights Handbook," is an explanation of that act. We have been surprised to find it in extremely heavy demand from American Indians and their organizations. A simplified version for those of poor literacy is being prepared. In addition, we are exploring other means of disseminating the valuable information it contains to American Indians through the audio devices, such as tape cassettes, for replay in tribal meetings and community centers and other gatherings.

Now, I would like to review briefly for you some other aspects of our activities in this field.

In fiscal years 1969–70, the Commission conducted preliminary research and investigations to gain an understanding of the problems facing American Indians living both on and off reservations, to establish contact with the Indian community, and to learn directly from Indians what problems merit the attention of the Commission. Field trips were made by the Commission staff members to the State of Washington, to northern and southern California, to the Navajo reservation in Arizona and New Mexico, and to Sioux reservations in North and South Dakota. Commission staff members interviewed a number of people, Indian and non-Indian, in Washington, D.C., who are knowledgeable about Indian affairs and problems.

As I mentioned, the Commission issued the "American Indian Civil Rights Handbook." Other publications to be issued are handbooks on:

First, Federal Programs;

Second, the Federal Administrative Apparatus as it Pertains to Indians; and

Third, Social Services.

The Indian project will continue to gather information pertaining to the equal protection of the law as it relates to Indians throughout field investigations, State advisory committee meetings, and at least one Commission hearing. This project is projected to continue into mid-fiscal year 1974.

We also have underway the most comprehensive examination yet undertaken by a Federal agency of Puerto Rican problems.

During the last 2½ years the Commission has been studying the problem of equal access to suburban housing and jobs for blacks and other minorities who are confined by tradition and practice to the inner city ghettos and barios. We have held hearings in St. Louis, Bal-

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timore, and Washington on the growing racial and ethnic polarization occurring in our urban areas. This polarization exacerbates many civil rights issues and will be the source of wider and more tragic divisions unless major efforts are undertaken to guarantee that the new opportunities and amenities in the growing fringe areas of our metropolitan centers are open to all. The Commission's work in this all-important field is by no means completed. We are producing studies to document the problems and to support major legislative recommendations.

As members of this subcommittee know, the Commission does more than produce reports and studies. I already have described the value of our State committees. In the last 2½ years we have made major strides in activating committees in every State and in integrating their work more closely with that of the agency staff in Washington. For example, our study of administration of justice in prisons, now underway, will be based in part upon reports from at least 12 State committees which have agreed to undertake work in that area. To support the activities of our State committees we have established field staff based on six cities: New York, Chicago, Atlanta, Los Angeles, San Antonio, and Washington. A seventh office was opened this month in Denver and we will be opening an eighth office in Kansas City in the coming fiscal year—if the Commission's life is extended.

An important part of the Commission's program is its clearinghouse function given to it in 1964. Under our clearinghouse program the Commission has prepared and published information on civil rights in a variety of forms for dissemination. We are continuing to develop publications on civil rights designed to be easily understood by the layman.

These, in outline form, are our major undertakings at present. Virtually all are long-range projects involving considerable data collection, factfinding, analysis, and, after the reports have been published, extensive followup.

Since the 1957 Civil Rights Act, the Nation has made its greatest strides forward for minorities in America since emancipation. We have seen a major revolution in civil rights. We have come a long way in a short span. Yet we have much, much farther to go.

We still have segregation in America. Minority group Americans still are denied equal opportunity in virtually every facet of life. We are moving ahead, but the pace is inadequate. The steps we have taken in less than a decade—historic as they have been—are only beginning steps.

That brings us, Mr. Chairman, to the necessity for S. 3121 and H.R. 12652.

Despite the fact that the Commission has very limited powers and a modest staff, it has made contributions during the past 14 years that are undeniably significant. Yet much more remains to be done.

Perhaps there were those who voted to create the Commission in 1957 who felt that a few years of operation would be sufficient; that after a short time, the Commission would be able to declare the Nation's gigantic race problems solved and shut up shop. Nothing would please us more than to be able to say to you today that a Commission on Civil Rights is no longer necessary. We need only to read our daily newspapers and watch our television sets to know that such a declaration in this day and time is out of the question.

The legislation before you would extend the life of the Commission 5½ years. Instead of going out of business next January, the Commission would continue functioning until the end of fiscal 1978.

An important provision of H.R. 12652 would take the Commission into an urgent new field and illustrate the point that civil rights is never a fixed and static subject. The new provision is contained in section 3, which would give the Commission jurisdiction over sex discrimination, in addition to our present jurisdiction over discrimination on account of race, color, religion, and national origin.

As the subcommittee knows, sex discrimination is a developing issue which is getting increasing attention across the Nation. A rather limited amount of dependable material is available, outside the fields of employment and education, on the various forms that sex discrimination can take and how it can deprive American women of full and useful lives. There is a great need for systematic and objective documentation of basic facts about sex discrimination, just as there was an immediate need for objective factfinding in the field of race relations when the Commission was established 15 years ago. I am hopeful that the Commission will be able to move forward and meet the need for objective studies of sex discrimination as soon as possible. It is our intention that this additional responsibility would not divert attention from the work we are doing to study and report other types of discrimination.

There are several other sections of H.R. 12652 which I will mention only briefly. These conform the Commission's statute with those of other agencies in certain respects.

Section 1 would permit payment of witnesses at Commission hearings at the same rate paid by Federal courts.

Section 2 would increase the compensation for Commissioners from $100 a day to the equivalent of the pay for Federal employees at Executive Level IV.

Section 5 would allow the Commission to pay consultants at the maximum GS–15 level, instead of $100 a day, bringing our pay for consultants in line with the scale paid by many other Federal agencies.

Finally, H.R. 12652, as amended by the House of Representatives, authorizes appropriations for the Commission in the amount of $6,500,000 for fiscal year 1973 and $8,500,000 for fiscal year 1974 and each fiscal year thereafter.

The authorization for appropriations for fiscal year 1973 in the amount of $6,500,000 will enable the Commission on Civil Rights to obtain the full appropriation of $4,821,000 as requested by the President and passed the House. This appropriation also has been approved by the Senate Subcommittee on Appropriations for the Departments of State, Commerce, and Justice, the judiciary and related agencies. The authorization figure also will allow the Commission to request a supplemental appropriation of $1 million to carry out its proposed sex discrimination program and will allow a request for an additional $500,000 to implement an effective Asian American studies program and for conducting investigations and studies of civil rights emergencies. We have been informed that the Office of Management and Budget has no objection to an authorization in the amount of $6,500,000 for fiscal year 1973.

The increased appropriation for fiscal year 1974 will enable the Commission to reach its midpoint program goals without encountering delays due to lack of sufficient resources with which to carry out all of our commitments. The major requirements of our increased request for fiscal year 1974 are for meeting anticipated demands on Commission resources for an adequate and substantial sex discrimination program without taking away resources for our program in the areas of discrimination on account of race, color, religion, and national origin, for completion of expansion of our field staff and for other major program needs, including improved research capabilities.

For 10 years the Commission operated with a general authorization for appropriations. During the last 5 years, we have had authorizations ranging from $2,650,000 upward to our present $4 million. Although this is a $1,350,000 increase, it represents, for the most part, mandatory salary increases and other cost increases necessary to keep the basic operation of the Commission going at the same level as when we were extended in 1967 and enabled a modest expansion over a period of 4 years. Our personnel strength authorized for fiscal 1968 was 153; our authorized strength for fiscal 1972 is 176. Out of this increase the Commission has established four additional field offices and increased slightly the strength of its Washington staff. As the only agency in the Federal Government engaged in research in the complicated field of civil rights the commissioners feel that such an expansion has not been commensurate with the enormity of the problems we face and for which we seek solution.

A principal advantage of a significant increase in authorization for appropriations for the Commission will be the flexibility afforded us in planning and responded to major events in civil rights. Because of our limited resources the Commission has not always been able to undertake significant work in response to legitimate requests from Members of Congress, the public and civil rights groups to study major civil rights issues of immediate national concern. The hardest decision we each face as a commissioner is to vote not to respond to such requests because of our inability to undertake extensive new projects without destroying our ongoing program.

I would like to suggest that if the Commission on Civil Rights were afforded an authorization which gave it the capacity to seek funds for such projects, an important missing link in our overall strength would be supplied. The commissioners feel the need to respond to major civil rights developments in a timely manner. As things now stand, a timely response to major new developments often is impossible.

I should note that S. 3121 and H.R. 12652 are part of the President's legislative program for 1972. You will recall that the President mentioned the Commission twice in his State of the Union message last January—once in calling for a 5-year extension of the Commission and again in recommending that the Commission's jurisdiction be expanded to include sex discrimination.

Much of the Commission's most important work—including the enforcement study, the suburban access program, the Mexican-American project, our housing studies, and our study of political participation—has come during the last 5 years. These endeavors would not have been possible unless we had 5 years in which to work. If Congress decides to extend the Commission for a similar term this year, we will be able to

continue the solid, painstaking efforts which have gone into the Commission's previous undertakings.

We have much unfinished business. Last summer members of the Commission met with our executive staff for a 3-day retreat. A large part of our discussions were devoted to identifying the unfinished civil rights agenda. We got rather specific and drew up a long list of things to be done. I will not burden you with reciting it, Mr. Chairman, but I would like your permission to submit it for the record.

Senator ERVIN. We will be glad to have that statement, and let the record show it will be printed in the body of the record immediately after Father Hesburgh's statement.

(The document referred to, entitled "Unfinished Commission Business," follows:)

UNFINISHED COMMISSION BUSINESS

(Denver Program Planning Meeting, August 27–29, 1971)

Voting

1. Appraisal of the effectiveness of the Voting Rights Act as amended, especially Section 5.
2. Assurance of equitable reapportionment for minority groups, such as the Mexican Americans in California, so that they will be able to elect their fair share of State legislators and Congressmen.
3. Analysis of the process and effectiveness of minority group participation in voting in those States where there are no roadblocks to participation.
4. Overall participation of minority group members in the political process, including political parties and party conventions.
5. Vote fraud is within the Commission's jurisdiction but has been neglected due to lack of funding.

Education

1. Completion of the Mexican American Education Study and dissemination of its findings.
2. Examination of the unitary school system and how it is in fact operating.
3. School testing and placement procedures and their effect on over-representation of minority group children in educable mentally retarded classes.
4. Racial imbalance in the public schools.
5. The power structure of school boards and how minorities can get into decision-making positions.
6. Scrutinize teacher training systems of the country, and the training systems for school administrators, to identify the extent to which they prepare participants for integration.
7. Examination of the impact of Federal funding at the college level.

Housing

1. Suburban land-use control.
2. Equal access to home financing.
3. The whole issue of suburban access.
4. Possibility of offering incentives to encourage integration of housing.
5. Continual monitoring of HUD housing programs.

Employment

1. A study of union discrimination, including analysis of Philadelphia-type plans.
2. Enforcing anti-discrimination laws, including providing cease-and-desist powers to the Equal Employment Opportunity Commission.
3. Minority economic development, including franchising and other types of entrepreneurship.
4. Displacement of agricultural workers by mechanization.
5. Large-scale unemployment among teenage minority youth.
6. Problems of migrant workers.
7. Examination of job training and upward mobility programs to see how well people are trained and what kind of jobs they get after training.

Administration of Justice

1. Police-community relations.
2. Civil rights of prison inmates.
3. The way Spanish surnamed persons not fluent in English are affected by the probation and court system.
4. The role of the Department of Justice in civil rights enforcement activities.
5. The juvenile justice system and how it functions vis-a-vis minority group youth.
6. Disparate treatment afforded minority people by the bail system, parole system, probation system, and the court system.
7. Disparate treatment and punishment of people of lower income levels.
8. Military justice.

Reverend HESBURGH. Thank you, Mr. Chairman.

We face civil rights problems today different from those which existed in 1957, when the Commission was created, but every bit as compelling.

We understand civil rights problems today differently than in 1957, when the Commission was created. Today it is widely understood that civil rights are concerns which affect not only the South but every region of the country. Discrimination against citizens because of their race, color, religion, national origin, and sex takes place everywhere in the Nation. Because discrimination can be less than blatant, more subtle and sophisticated, it is no less destructive to majority and minority Americans alike, and no less dangerous to the Nation. It was relatively easy to identify the discrimination which barred black people from the ballot boxes; it is difficult and demanding to trace the hiring practices and screening techniques which bar minority Americans from jobs, schooling, and housing. Devising solutions and remedies which will achieve results while balancing conflicting demands of individuals and of groups is an exacting task which requires knowledge of facts and persistent attention to detail. The Commission has played its part in this national endeavor, and, if extended by Congress, will continue to do so.

Thank you very much, Mr. Chairman.

Senator ERVIN. Thank you, Father Hesburgh.

I would correct one error in your statement, and that is this: You stated that Congress had given enforcement powers to EEOC. An effort was made to do that, but the House passed the bill continuing the program by which these could be enforced in the courts only. The Senate committee reported the bill to give them self-enforcement powers, and the Senate amended the bill. So, both bills now provide for substantial enforcement through the courts.

Reverend HESBURGH. That is correct, through the courts.

Senator ERVIN. It has expanded to some extent the definition of those who can make application. So, your statement is not entirely erroneous. It is partially correct and partially incorrect.

Reverend HESBURGH. Thank you for that distinction which clarifies the statement.

Senator ERVIN. I am, I might frankly say, opposed to giving enforcement powers to the EEOC, because then the Commission is set up under a law which gives it power to investigate complaints, to make complaints, then to prosecute complaints, and then to act as the judge to pass on its own complaint. If that is not a denial of due process of law, I do not think that any human mind is sufficiently gifted to know what a denial of due process of law is.

Does counsel have any questions?

Mr. BASKIR. Father Hesburgh, is the Commission's jurisdiction coextensive with the 14th amendment equal protection clause, or do you have less jurisdiction than that particular clause would encompass?

Reverend HESBURGH. I would think it is reasonably coextensive. But on the other hand, I think we have that qualifying phrase of race, color, religion, and national origin spelled out very carefully for us in the Commission statute. At times, we get complaints that I feel might be complaints under the 14th amendment, but they are beyond our legislative mandate.

Would that be correct, Mr. Powell?

Mr. POWELL. Yes.

Reverend HESBURGH. I always check with the lawyer, as I am not a lawyer myself.

Senator ERVIN. Please excuse me, but I have to go over to the Senate floor for a vote. However, it will be all right for counsel to continue his questions in my absence, and I will be back as speedily as possible.

Mr. BASKIR. Would you say a complaint of discrimination based solely on sex would not fall within your jurisdiction now without the extension of jurisdiction you ask for?

Reverend HESBURGH. Yes, I would say that. We have had actually a number of sex discrimination complaints from women's organizations mostly and woman's lib, and that sort of thing. We have said that we simply cannot take them on because of our statutory restriction of race, color, religion, and national origin.

Mr. BASKIR. Do you now do any work with respect to discrimination involving sex if it is in relationship also to, let us say, racial or ethnic or religious minorities?

Reverend HESBURGH. We have not specifically done that, although we have a commissioner who is a woman who says that she has been discriminated against doubly both by being a woman and by being black. She keeps our nose to the grindstone whenever something touching on that would come up.

I cannot remember specifically taking up problems of this sort.

Mrs. FREEMAN. May I speak to this?

Mr. BASKIR. Certainly.

Mrs. FREEMAN. In the 8 years I have been on the Commission, where we have held hearings and made studies involving discrimination and imbalances in the local administration of justice and discrimination in the welfare programs, some of our witnesses were women. We were, of course, afforded an opportunity by their testimony to make some determinations about the unequal treatment of women. In terms of minority women as such, we do not have jurisdiction over them in their status as women. But in terms of national origin and race, of course, we do include women in these studies.

Mr. BASKIR. Do you feel that the Commission has the jurisdiction now to do studies which would include both sex and minority in the sense that you could engage in studies of minority women in various aspects without the extensive jurisdiction?

Mrs. FREEMAN. No, we absolutely need the enactment of this legislation to include the whole area of sex discrimination. First of all, our present jurisdiction is so limited. It is true that minority women are at the bottom of the bill, however, in terms of employment, in terms of credit practices, and in terms of State laws which discriminate against women. This Commission does not have the power to make any studies

on the basis of that. And we believe that we should have the jurisdiction expanded to include discrimination on the basis of sex for that reason.

Mr. BASKIR. I can understand that. I was just wondering, as it stands now, whether the Commission has done anything, or feels it could do anything, with respect to minority women—assuming the question of the expansion of jurisdiction aside. Do you feel that your jurisdiction now would enable you to do studies with respect to minority sex discrimination without an extension?

Reverend HESBURGH. Perhaps that is for the General Counsel to answer.

Mr. POWELL. Certainly, we have the jurisdiction based on race, color, religion, and national origin, and we would look at the other problem of minority women as women of racial minorities, but we could not look at the broader question.

Mr. BASKIR. I understand.

Has the Commission done anything, any studies except those which you have suggested, with particular attention to minority women?

Reverend HESBURGH. No, we have not; although I would say that at every single hearing we have had testimony from minority women, and that has been part of our total testimony.

Mr. BASKIR. Can we assume that the money in the estimates submitted to us, the $1 million, roughly, for 1973 and the $2.25 million for the succeeding years is tied to the expanded jurisdiction that you do not have, that is to say, sex discrimination—not tied to the problems of minorities of an ethnic or religious or racial nature?

Reverend HESBURGH. No. This would be for the total of the problems based on sex, including minority problems based on sex.

Mr. BASKIR. In other words, if you do not get this extension you will not have any program, or money, with respect to minority women or nonminority women?

Reverend HESBURGH. That is correct.

Mr. BASKIR. My understanding then is that the appropriation request you have submitted does not include any programs with specific attention to women in any respect?

Reverend HESBURGH. That is correct.

Mr. BASKIR. Is that right? Does the Commission have any estimate of the additional staff that would be required in 1973 or succeeding years?

Reverend HESBURGH. Yes.

Mr. BASKIR. If you get the additional sex discrimination jurisdiction?

Reverend HESBURGH. I would ask Mr. Buggs to speak to that.

Mr. BUGGS. Yes. We have tried to cost this out in terms of additional number of people, that would be required to add that responsibility to the Commission's program both in the Washington office and in the eight, seven or eight, regional offices. We come up with the figure of somewhere between 70 and 80 staff people.

Mr. BASKIR. That would be for 1973 or what?

Mr. BUGGS. No, for after the 2-year period.

Mr. BASKIR. For fiscal year 1974 and beyond?

Mr. BUGGS. That is right.

Mr. BASKIR. This is in addition to the figures you submitted to us with respect to the other increases without sex discrimination of some 40 I think it was——

Mr. BUGGS. That is right. That 40 did not include any consideration of sex.

Mr. BASKIR. This is over the figures that you have already submitted to us?

Mr. BUGGS. That is correct.

Mr. BASKIR. The figure of $2.25 million that you have budgeted out for sex discrimination, the additional jurisdiction with respect to such discrimination comes to, roughly, 25 percent of the $8.5 million. Do you feel that this 25 percent of the total accurately reflects your estimate of the social problems or the civil rights problems of sex discrimination as opposed to the various other kinds you are also dealing with?

Reverend HESBURGH. I think so, because you are talking about a big segment of the population. Women constitute more than 50 percent of the population while all the other minorities, including the Indians, are less than 100 million people. When you speak of women it is more than 100 million people. Clearly a large number of people are involved, and when they are, the problem proliferates, you cannot underestimate the great deal of urgency on these problems today and the great many private organizations pushing us to do something about them.

Mr. BASKIR. I recognize that there may be only a million or 100,000 American Indians, but perhaps their problems, although small in terms of number, might be greater than the problems of 100 million women who might be a majority.

Reverend HESBURGH. That is correct. I think the women are in a position to put more pressure on us, let me put it that way. We have to respond to some extent to the problems as perceived by American citizens generally. And I think all of you gentlemen will agree that 100 million women in this country can create a great deal of pressure if they put their minds to it.

Mr. BASKIR. I think we have some familiarity with that kind of pressure.

Reverend HESBURGH. And I should reiterate that we are going to spend $300,000 on American Indian problems next year.

Mr. BASKIR. And you would say that the $2.25 million is a reflection of not only the number of women but also the earnestness with which they push their cause?

Reverend HESBURGH. Yes, I think so.

Mr. BASKIR. In addition to, perhaps, the difficulties that they face?

Reverend HESBURGH. That is right. It is a very honest reflection on our part since we have never done this before. We can only extrapolate from the past experiences of other groups that this is a very large group that is developing a great head of steam, and we are going to hear a lot from them. We know that we will the moment we are granted jurisdiction over sex discrimination.

Mr. BASKIR. It may be that the quiet minorities who do not have as much political pressure behind them, or do not have as much voice might be more in need of your assistance than the ones that are vocal and politically powerful. It may be that the Asian Americans or the Mexican Americans or the American Indians or the Slovak Americans who are not politically powerful might need more money than women

who are politically powerful. They might need more than the $2.25 million.

Reverend HESBURGH. What we are finding now is that we are really responding more to all of these groups. I think when I began with this Commission—and I go back to the first day—we had to begin with the problems of blacks because that was the largest minority we had and the most obvious, and their problems were the most obvious.

From that time, we moved into our second series of five reports in 1961 and took up the American Indians problem, tentatively in volume V of that issue.

Then, we got to the Mexican Americans. Then we got to the Puerto Ricans. And now we are getting to the Asian Americans in the next year, because they are beginning to insist that we focus on their difficulties. I have probably received 30 or 40 letters in the last month from Asian-American organizations and individuals saying: "When are you going to get around to us?"

So, we have a program to study that problem during the next year.

We think that once we have a baseline study, then we have somewhere to go. But our problem is that in all of these areas there just is no dependable baseline study to begin with. We are, in a sense, the only research and development effort in the area of civil rights. There are many activist groups, but we do most of the R. & D., and many of the court decisions depend on us for basic factual information.

Mr. BASKIR. From Mr. Buggs' estimate as to the number of additional personnel, it appears that the personnel which you will need to cover this new jurisdiction is also a significant fraction of the total, just as the money is.

I believe you have estimated 216 employees for 1973 without sex discrimination jurisdiction, and, perhaps, with an additional 20 after that without sex discrimination.

Mr. BUGGS. Yes.

Mr. BASKIR. Would you estimate roughly, 230 or 240?

Mr. BUGGS. Two hundred and sixteen.

Mr. BASKIR. Plus another 26?

Mr. BUGGS. No. No. We have 176 now. For next year, we will be asking for 40, a total of 216.

Mr. BASKIR. So, you will have 216 without the additional personnel needed for sex discrimination, and your estimate for that original jurisdiction is some 80 new positions which is better than a third of your total personnel. So, as your money is about 25 percent of your total, it will turn out that your personnel is going to increase by a third with respect to this one new area?

Mr. BUGGS. Could I indicate how that works out?

If you look at what we are planning to do in terms of studies, I think you have to recognize a couple of things.

Our Mexican American study project involves only the Southwestern States, where there was a relatively small population of 4½ or 5 million people. That project came to $324,000 and involved some 25 staff people, many of whom are still working on it.

Now, if we go into the field of discrimination with respect to sex, it will not be limited as has been true in connection with practically all earlier Commission studies to a particular segment of the Nation.

We have 50 States, and, in order to collect statistics and to do research and to write reports, I sometimes think that the suggestion of $1 million for the first year and $2.25 million for each succeeding year is an underestimate of what it will actually take.

One of our responsibilities would be, as you know, that of exercising a clearinghouse function in connection with sex discrimination, just as it is now our responsibility with problems of race. We have been checking around to see what it costs simply to collect the kind of data that has already been developed with respect to the problems of women and to have that data available and retrievable for individuals and organizations doing research into this problem, and for our own use.

We talked to people at the Smithsonian Institution who bank data concerning their area of responsibility. It costs that institution $2 million a year just for banking and retrieving data.

I talked to one of the persons at the Department of Labor who is responsible for developing and retrieving data on problems of employment generally for the whole country. He frightened me to death. He said it would take $4 million the first year. Well, we do not intend to spend any of that kind of money. But if we are going to create even a moderate capacity for discharging the clearinghouse function, I am just not sure that we can do it within the $2.25 million.

Reverend HESBURGH. I think Mrs. Freeman wanted to add something.

Mrs. FREEMAN. Yes. I am glad that Mr. Buggs made that point, because I always felt that $1 million was not enough. If we are going to start something that is really very new, and examine the laws of the various States with respect to domicile and property rights, why, this is a study that requires a lot of money. We are going to examine women in the job markets, women in correctional institutions, educational training, education in elementary and secondary schools, and women's role in television. The kind of work that needs to be done, really, will cost much more than the Commission is asking for in this bill.

So, as has already been said, all of these studies that we are contemplating include women, all women, white, black, brown—all women. You cannot compare them with any of the special studies on Mexican Americans or Puerto Ricans or Indians.

Mr. BASKIR. Do you feel that the problems of women in general may break down into different subproblems—that black or Mexican women may have more or different kinds of problems than women in general? Would you have to have some special focus?

Mrs. FREEMAN. This will be true. And we will study the problems of discrimination as we have found them. We know there is discrimination against black women but we also know, although it has not been documented, that there is discrimination against all women. Even in the Federal Government less than 2 percent of the persons in the higher grade levels—above level 16—are women. I think it is 1.04 percent. That is the Federal Government.

Mr. BASKIR. The problem may be different, however, for black women as opposed to all women, or black women as opposed to white, Anglo-Saxon American women.

Mrs. FREEMAN. We want to examine it in all aspects.

Mr. BASKIR. But where your studies do not take that into cognizance, you may have some problems in achieving a meaningful result. If you just consider the problems with respect to women in general as opposed to women of various groups, subgroups, or however you classify them.

Mrs. FREEMAN. Well, we do not really know. I do not think that we can anticipate all of the answers. We know that the problem is very real.

Reverend HESBURGH. I should add, Mr. Baskir, that Dr. Rankin at the end of the table says that we did not ask for this problem, that it was foisted on us.

Mr. RANKIN. This problem was thrust upon us by the President, by Congress and by other women.

Mr. BASKIR. Well, I am concerned as to the relationship of this new jurisdiction to your existing jurisdiction on the problems that Dr. Hesburgh mentioned which are still so pressing. I wonder, in preface to my next question, do you have breakdowns of your costs with respect to the various groups you have studied? I know that— —

Reverend HESBURGH. Yes, we do, in a general sort of way. For example, I can say that we plan to allocate about $300,000 next year to the study of American Indians.

Now, that is a study effort for next year. We think we are getting to a point where we can break up and have subcommittees of the Commission at hearings, two commissioners in Nevada and two in North Carolina, and two in Arizona. And we are going to spread ourselves over the next year to try to get, again, this basic line study of American Indians. For a study like that we think it will cost about $300,000.

I think probably one breakout would be a study of Mexican Americans, and we certainly can break out the study of the Puerto Ricans to give you an idea of what it costs, and, then, the Asian American study next year.

Mr. BASKIR. Do you think you could submit a breakdown to the subcommittee?

Mr. BUGGS. I can tell you right now.

Mr. BASKIR. It might be better if you would just submit the last couple of years broken down with respect to the various groups whose problems you have studied. I notice you have done it with respect to women fairly specifically, but I have never seen that kind of an estimate done for any of the other groups that have come under your jurisdiction.

Reverend HESBURGH. We can do that.

(The following expenditure estimates have been supplied by the Commission on Civil Rights:)

COMMISSION ON CIVIL RIGHTS EXPENDITURES ON PROGRAMS DEALING WITH MINORITY GROUPS OTHER THAN BLACKS

The Commission on Civil Rights examines issues of concern to all minority groups in each study or project undertaken as a rule. Minority entities, however, often have specialized problems, unique to their group and not shared generally by other citizens. These problems have been given special attention by the Commission on Civil Rights. The following is a listing of such projects and their cost undertaken in the last three fiscal years.

Project	Fiscal years— 1970	1971	1972	Total
Mexican-American administration of justice	34,690	12,926	----------	47,616
Mexican-American education	211,799	324,857	227,096	763,752
Other Mexican-American projects (including State advisory committee activities)	20,000	30,000	35,000	85,000
American Indians	30,098	61,492	113,298	204,888
Puerto Rican project	10,650	69,857	187,014	267,521

Mr. BASKIR. Do you plan any special organization within the Commission for sex discrimination cases such as a woman's bureau, for instance, or some other kind of division or structure within the Commission to handle this problem?

Reverend HESBURGH. We have really resisted this, because we think we have common problems. We would like to feel that this problem could be taken up in the normal course of events. We may have to get some kind of an advisory committee, or something to the Commission, to give us special insights in this end of the field, but we do not expect a special division.

Mr. BASKIR. And I gather you do not feel that although the increase of staff is going to be a third of your present personnel level, that the increase of money is going to be 25 percent. And you expect increased pressure from women's organizations, the new jurisdiction will dilute or injure the other programs that you are still concerned with. Is that correct?

Reverend HESBURGH. No. We have budgeted our normal programs in the normal way, and we have looked at this as an add-on. In other words, we say if we get the additional responsibility we ought to get the additional support to carry it out.

Mr. BASKIR. I call your attention to the estimate that was given with respect to the use of the money, the $1 million and the $2.25 million. You listed something like seven areas where the money will be used. Except for the last one, the new studies on sex discrimination—most, if not all, of the other six areas seem to represent increases in your general structure and your general cost.

For instance, an expansion of State advisory committees, additional public liaison, additional access to data sources, expansion of your program evaluation section. These are all general expansions of your bureaucratic structure, and the only new thing outside of doing more or having more people to do it will be your new studies?

Reverend HESBURGH. No, that is not correct, really, because we are getting much more deeply into the American Indian studies next year.

We are completing three of our publications on Mexican-American studies.

We are winding up some studies initiated this year for the first time on the Puerto Ricans.

We have to get into the Asian-American projects next year for the first time.

Some problems do get pretty well cleaned up. For example, in the early years we spent an enormous amount of money—proportionally, of our budget, never having any enormous amount of money, but we spent an enormous proportion of our budget on voting studies. We

do very little in that area anymore. We had a lot of studies on public accommodations problems, and we have practically none of that anymore. We had a lot of programs on desegregation on the early days, and now the problems have taken on a new slant and nationwide focus.

So, there is a continual growth in problems as they are specified. We find today that many of the ethnic minorities are conscious of problems they did not seem to be conscious of before. I suppose that is normal. When they see some group getting attention, then they want a little attention, too. We are really at the beck and call of all of the American people and all subdivisions, if you will.

Mr. BASKIR. My question was more with respect not to the general increase in funds that you were requesting but the additional million and $2.25 million with respect to your added jurisdiction on problems of sex discrimination. Most of the money, from what we have gathered from your responses to the subcommittee, is to be for expansion of your existing structure. In essence, there is only one of those seven items which seems to be new work and new studies. You want more people to handle complaints, more people to revise existing publications, et cetera, but all of this money, again, is to increase the general structure of the Commission. There is only one area, that of new studies, where you are doing new work.

Reverend HESBURGH. Well, it is the studies that are eating up the money.

Mr. POWELL. We, of course, intend to keep implementing our present jurisdiction and conduct additional studies. We would require some additions in staff and some expansion to some modest extent to what we presently have, if we assume this new jurisdiction.

Mr. BUGGS. Perhaps, I could explain it another way.

There are two ways the Commission keeps books, so to speak. It keeps books in terms of costs of studies which would, in this case, add up to a million dollars, and it keeps books in terms of cost for personnel and other kinds of expenses.

Now, for example, when we say that last year we spent $324,000 on the Mexican-American study, a large part of that was personnel, personnel that we have got. Some of it was in transportation, some in telephone calls, some in circulation of schedules to school districts in Texas, Arizona, and New Mexico. But a large part of it is also staff. All of the Commission studies are done by staff. A few contracts are let, but not very many. So that when we say $300,000 for a study, that does not mean that we contract that study and give somebody $300,000. That means that that is the amount of time, staff time, that goes into that study, plus other expenses connected with it.

Mr. BASKIR. Now, I think I understand it better.

There are some other points in the bill outside the question of jurisdiction and the financial authorization with respect to witness fees and per diem, and the like. Am I correct in understanding that these figures, as requested, would bring the Commission up to a comparable level with other agencies?

Reverend HESBURGH. That is correct.

Mr. BASKIR. And that you are somewhat lower than they are and this would just bring you up to normal?

Reverend HESBURGH. That is right. These are rather inconsequential in their total effect—$2,000, really.

Mr. BASKIR. There is another point to be discussed. Although I am not sure it is in the bill, and that is with respect to requiring responses from other Government agencies when you make a request for information or material.

I wonder if you could explain some of that?

Reverend HESBURGH. I do not think that is in the bill now as it is presently written. That was one of our suggestions, that that provision might help us get more prompt answers.

Sometimes we write letters to other Government agencies and wait 6 months, and then we write another letter and wait another 3 months, and, gradually, we end up calling on the telephone and doing other things. We felt that by having that provision in this bill might help speed up our responses. It was apparently not judged important enough to put in.

Mr. BASKIR. It may not have been judged of any use, because the Congress has similar difficulties, and we have even worse experiences in terms of time than you all do.

I noticed, in your prepared statement, you mentioned the lack of information with respect to problems of sex discrimination, with the exception of the areas of education and employment. Except for those two areas, there is a dearth of information. Is that correct?

Reverend HESBURGH. That is right.

Mr. BASKIR. The list of the possible studies on the problems of sex discrimination you have submitted to the subcommittee seems to be very heavily weighted in just those two areas: education and economic status. Of those things that you suggested to us, about half of them are on the very areas where, apparently, you do not think there is that lack of information. It is also my understanding that other agencies in the Government, like the Labor Department, do work in that area. I wondered if there is not going to be a lot of duplication?

Reverend HESBURGH. We try to avoid this like the plague because, believe me, our budget is such that we have to husband it. Before we start collecting information we try to see what all of the information is that has been collected. So, to a great extent we have been able to correlate information from many areas, and also to give a precise slant with regard to civil rights implications of the information.

Mr. BUGGS. This is not a collection. What we propose is not what the Women's Bureau or the Department of Labor does. They collect statistics and print statistics. There is no analysis, there is no research to determine why the statistics as they are collected are as they are. Our responsibility is to do research and go behind the raw figures and numbers and make recommendations based upon an indepth analysis of what the problems are and why those situations exist.

That is not done in any area of civil rights or by any organization operating within civil rights except this Commission.

Mr. BASKIR. Did you have anything to add?

Mrs. FREEMAN. No. Mr. Buggs has said what I was going to say.

Mr. BASKIR. I have no more questions.

Senator ERVIN. Dr. Rankin, do you have any statement you would like to make?

Mr. RANKIN. No, nothing in addition to what has been said. I think you understand my position pretty well. We have talked it over previously.

Reverend HESBURGH. Mr. Chairman, may I take this opportunity of thanking you for your interest and your kindness to this Commission over a long period of years.

Senator ERVIN. Thank you. I have tried to expedite this as much as possible so that the Senate can act on it.

Reverend HESBURGH. We appreciate that very much.

Mr. RANKIN. We also appreciate how much you have done in the field of civil rights, Senator Ervin.

Senator ERVIN. Well, thank you very much. Thank you all very much for your appearance.

Reverend HESBURGH. Thank you, sir.

Senator ERVIN. Let the record show that Senator Hart, who sponsored S. 3121, has prepared a statement which he asked me to put in the record this morning.

(The prepared statement referred to follows:)

STATEMENT OF SENATOR PHILIP A. HART

Mr. Chairman, the U.S. Commission on Civil Rights was created one year before I was elected to the Senate. During my years in the Senate, I have found the Commission to be one of the most valuable and energetic of all Federal agencies.

Time and again, the Commission has demonstrated that it is an essential arm of the Government. Commission hearings, investigations, fact-finding, and recommendations have paved the way for numerous laws and regulations pointing toward a better life for American minorities. Each of these advances has added to the Nation's strength and well-being, and has renewed its hope. The Nation is better off for the work of the Commission, and all of us—whether part of a minority group or part of the white majority—have benefitted.

There may have been some who felt in 1957, when the Commission was established, that a few years of life for the Commission on Civil Rights would be sufficient. Unfortunately, that has not proved to be the case. Despite the advances that have been made since 1957, much remains to be done. I believe that every member of the Subcommittee will agree that equality of opportunity is a long way from reality for America's minorities—the Indians, the Spanish speaking, and the Asian Americans, as well as our 23 million blacks.

So the gains must be solidified and the advances must continue. The various civil rights laws must be fully implemented and, where necessary, improved. Some Federal forum, supported by expert and experienced staff, must be kept available for examining the daily acts of discrimination which continue to trouble and divide our society.

The importance of the Commission on Civil Rights in filling such a role can be demonstrated by the Voting Rights Act and the extension of that Act in 1970. The first and foremost task facing the Commission on Civil Rights when it was created in 1957 was the investigation of denials of the ballot to thousands of black citizens. The Commission conducted an extensive study of those denials and made recommendations which led up to the Voting Rights Act of 1965.

Soon after that historic act was adopted, the Commission launched thorough studies of the implementation of the act and the voting problems that persisted even in the face of the act. A major study was completed in 1968, and in the following year the Commission was able to supply much of the information that furnished the basis for extending the act.

From the beginning, the Commission has been concerned about discrimination in the North, East, and West as well as in the South. In its first report, issued in 1959, the Commission stated that its study of housing had "demonstrated that civil rights is truly a nationwide problem."

Moreover the 1959 report recognized that minorities other than blacks are victims of discrimination in America. In recent years, the Commission has been devoting an increasing amount of attention to denials of equal opportunity to those other minorities—our first Americans, the Indians; the Mexican Amer-

icans, who live primarily in the Southwest; and the Puerto Ricans, who live primarily in the cities of the Northeast and Midwest.

So the Commission on Civil Rights is truly a national commission, both in its membership and in its interests and work. The Commission has three important attributes which I would like to mention specifically: its bi-partisan nature, its independence, and the continuity of its programs.

The law creating the Commission wisely prevents the President from appointing a majority of its membership from a single political party. Thus the Commission is not the handmaiden of any political party, whether in or out of office. This factor has a great deal to do with the objectivity for which the Commission's reports and findings are justly noted.

Moreover, the Commission reports to Congress as well as to the White House. Each house of Congress receives the Commission's reports and findings just as soon as the White House does. The Commission therefore is not under the direction of either branch, but is responsible to both. This independence contributes enormously to the integrity and worth of the Commission's reports and recommendations.

A third important characteristic of the Commission is the fact that it has remained in existence, rather than making a few reports and disappearing. This continuing operation has enabled the Commission to monitor the implementation of its recommendations, disclosing deficiencies and inaction wherever found. This followup function has been a major Commission activity of recent years.

Although the Commission speaks with a strong, clear voice, it is relatively powerless. The Commission exercises no enforcement authority. It cannot prosecute anyone or cut off funds. It cannot file suits or remove officeholders. Its power is limited, by and large, to its power of persuasion. Nearly two-thirds of its formal recommendations have been adopted in some form.

I feel very strongly that the time has come to expand the Commission's jurisdiction to include sex discrimination. I am pleased that the President made that recommendation, along with a recommendation that the Commission be extended for five years, in his State of the Union Message last January. The Commission has the sort of expertise needed to deal with the problems of sex discrimination and to make well-documented findings and recommendations, just as it has done with respect to racial and ethnic discrimination. The Nation will be well served by giving this additional important assignment to the Commission.

In concluding, I would like to point out that S. 3121, which I have the honor of co-sponsoring with the distinguished minority leader, Senator Scott, calls for an open-ended authorization—that is, an authorization without ceiling. We felt that this provision was in order—especially since the Commission would be given jurisdiction over sex discrimination in the same bill.

However, the companion measure, H.R. 12652, was amended in House committee to raise the present authorization ceiling to $6.5 million for fiscal year 1973 and $8.5 million for fiscal year 1974. While I still think that an open-ended authorization would be best to insulate the Commission from efforts to intimidate its independent research and would permit ample appropriations as needed, I am prepared to support specific ceilings, provided they are high enough to assure adequate funding authority. In this context, the House figures seem reasonable to meet the expected growth of the Commission's vital activities in the next five years.

For 15 years, the Commission has performed the invaluable task of constantly reminding the Nation of the distressing gap between the promise of equal opportunity and the reality of inequality. We need the Commission's honesty, forthrightness, and perception, and we will continue to need it so long as widespread discrimination is an unhappy fact of American life.

Mr. BASKIR. Mr. Chairman, our final witness this morning is Mrs. Lucille H. Shriver, director, Business and Professional Women's Clubs of the United States.

Senator ERVIN. We are glad to welcome you to the committee, and I would suggest you, for the purpose of the record, introduce the lady who accompanies you.

STATEMENT OF LUCILLE H. SHRIVER, DIRECTOR, THE NATIONAL FEDERATION OF BUSINESS AND PROFESSIONAL WOMEN'S CLUBS OF THE UNITED STATES; ACCOMPANIED BY MRS. JUDY WIEBE, LEGISLATION DIRECTOR

Mrs. SHRIVER. I sure will. I am Lucille Shriver, Director, Business and Professional Women's Clubs, and with me is Judy Wiebe, our legislation director.

Senator ERVIN. You may proceed.

Mrs. SHRIVER. Mr. Chairman, as federation director of the National Federation of Business and Professional Women's Clubs, Inc., I am honored and pleased to have the privilege of appearing before this subcommittee today to testify on legislation which would extend the life of the Civil Rights Commission and expand its jurisdiction to include discrimination on the basis of sex.

The opportunity to testify on this measure is especially welcomed because the expansion of the Commission's authority to include the study and investigation of sex discrimination has for some years been a priority item on our federation's national legislative platform. This platform is adopted at our annual national convention by delegates representing our 175,000 members, all working women, who live in the 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands.

The need for extending the life of the Civil Rights Commission is, we believe, self-evident. In the years since its creation in 1957, the Commission has played a unique role in the area of civil rights. Its studies and comprehensive reports to the President and to Congress have provided invaluable information on the civil rights problems facing our Nation.

As a result of these reports and recommendations, many important and far-reaching steps toward our goal of full equality for all Americans have been taken. Some examples of legislative actions which were based, at least in part, on the findings of the Commission include the Civil Rights Act of 1964, the Voting Rights Act of 1965, and title VIII of the Civil Rights Act of 1968.

The Civil Rights Commission has been particularly effective, in our opinion, because it is an independent agency. Its findings carry great weight precisely because the Commission is impartial and nonpartisan.

Although considerable progress has been made in the area of civil rights, much, much more needs to be done. The work of the Civil Rights Commission is by no means finished. The civil rights problems facing our country in the 1970's are diverse and complex. Because the Commission makes such an important contribution, we strongly support its extension for another term.

We are pleased to note that President Nixon, in his State of the Union address, recommended such an extension. We feel this support from the President indicates the value of the contributions made by the Commission in the past and the necessity of continuing its activities.

In addition, we are most encouraged to see that the President also recommends broadening the jurisdiction of the Commission to encompass sex-based discrimination. With this we heartily concur.

Mr. Chairman, discrimination on the basis of sex is a fact of life for the American woman. In the job market, in education, in property rights, in a hundred different ways, the American man and the American woman do not have equal legal rights.

The extent of this discrimination is not fully known. The President's Task Force on Women's Rights and Responsibilities, which recommended that the Civil Rights Commission be empowered to study sex discrimination, pointed out that the hearings and reports of the Commission "would help draw public attention to the extent to which equal protection of the laws is denied because of sex," The Task Force report said:

"Perhaps the greatest deterrent to securing improvement in the legal status of women is the lack of public knowledge of the facts and the lack of a central information bank." [1]

Although more and more information appears to be available on the status of women in our country, most of it is limited to the field of employment, and even there it is not complete. What the available information does indicate, however, is that discrimination against women in the work force is both real and prevalent. For example, a comparison of the median wage or salary incomes between 1955 and 1969 of men and women who worked full time reveals not only the incomes of women are consistently less than those of men, but also that the gap has widened in recent years.

In 1955, women's median income was 63.9 percent of that earned by men. This dropped to a low of 57.8 percent in 1967. In 1969, the most recent year for which figures are available, women's median earnings of $4,977 were only 60.5 percent of the $8,227 received by men—not even as high as the 60.8 percent figure for 1960.

The radical difference in wages for men and women today is revealed also by the fact that only 6 percent of men full-time workers in 1969 earned less than $3,000, while 14 percent of the women were at that pay level. And 51 percent of the women, but only 16 percent of the men, earned less than $5,000. At the other end of the scale; only 5 percent of the women, but 35 percent of the men, had earnings of $10,000 or more.

Equally disturbing is the fact that, with only one exception, the more education a woman has, the greater the gap in her income as compared with men who have similar education. The median income in 1969 for full-time working women with less than 8 years of elementary school was 62.5 percent that of men with the same educational background. A woman with 4 years of high school had a median income of only 58 percent that of men in the same category.

It was even worse for women with 4 years of college, for they earned $7,396, while the men earned $12,960—a difference of 57.1 percent. Only women with 5 years or more of college came even close, and their median income equalled only 67.2 percent that of men in their educational group.[2]

Not only do such facts point to economic deprivation for women, but they also reveal that women are deprived of self-fulfillment and development simply on the basis of sex. The American Society for Personnel Administration and the Bureau of National Affairs, Inc., con-

[1] A Matter of Simple Justice, The Report of the President's Task Force on Women's Rights and Responsibilities, April 1970, page 9.
[2] Fact Sheet on the Earnings Gap, Women's Bureau, U.S. Department of Labor, 1971.

ducted a survey indicating that women are deliberately placed in less challenging, less responsible, and less remunerative positions on the basis of sex alone.[3] A woman's education, experience, and ability in the labor market do not qualify her for jobs that her sex has automatically denied her.

Education is another area in which the available information indicates widespread discrimination on the basis of sex. An independent task force report funded by the Ford Foundation found that "discrimination against women, in contrast to that against minorities, is still overt and socially acceptable within the academic community."[4]

Senator ERVIN. I am sorry to interrupt you, however, I have to go over to the Senate floor to vote. Please continue the hearing with counsel, and I will be back as soon as possible.

Mrs. SHRIVER. This discrimination is found both in admissions and in employment. According to the 1972 "Report of the Women's Action Program," Department of Health, Education, and Welfare:

> Women seeking higher education at both undergraduate and graduate levels are subject to unequal consideration and treatment by colleges and universities—in admissions, in the classrooms, in financial aid and fellowships, and in continuing education opportunities. Both the 1971 "Newman Report" on Higher Education and the extensive hearings on sex discrimination before the House Special Committee on Education, held by Congresswoman Edith Green during June 1970, confirmed these patterns. . . .
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> The bias against women professors and administrators in colleges and universities has denied both professional women a just opportunity for work and students a chance to observe "models" of female achievement. Few women doctorates are hired because of the male-dominated faculty recruitment system and communications network, the nepotism rule, and the lack of part-time positions. Advancement for the few women appointed is limited by lack of tenured positions for women, maternity policies, double standards for promotion, and underrepresentation of women in decision-making groups.[5]

Discrimination against women is not limited to education and employment. It pervades all areas of American life. For example, some States restrict a married woman's contractual capacity. In some instances she must have the consent of a court, or of her husband, before she can enter into an independent business; in others, she does not have the legal capacity to become a surety or a guarantor. In community property States, a working wife may have no say over how her income is spent. Only a few States permit a married woman to run for office where she lives, regardless of her husband's domicile, and in many States a married woman's jury service depends on her husband's domicile. A number of States permit women to be excused from jury service on grounds not available to men, and in at least one State women are called for jury service only if they indicate that they wish to serve.

More study is needed in all these areas, as well as in such matters as housing, the administration of justice (including correctional institutions and length of sentences), marriage, divorce, alimony, child support, taxes, and social security, among others. We believe the Civil Rights Commission is the logical agency to make these studies.

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[3] ASPA–BNA Survey: Employment of Women, American Society for Personnel Administration-Bureau of National Affairs (Washington, D.C.: Bureau of National Affairs, c1970).
[4] Report on Higher Education, an independent task force report to HEW, funded by the Ford Foundation, 1971. See also Congressional Record, Feb. 15, 1971, p. S1771.
[5] Report of the Women's Action Program, January 1972, U.S. Department of Health, Education, and Welfare, Washington, D.C., pp. 63, 66.

One reason for this is that, at present, there is no one central source of information concerning discrimination on the basis of sex. For example, the Equal Pay Act of 1963 is administered by the Wage and Hour Division of the Department of Labor. But this is a specialized area and the law, as part of the Fair Labor Standards Act, applies only to those women employees who are covered by that act.

The Equal Employment Opportunity Commission administers title VII of the Civil Rights Act of 1964. Again, the information available pertains only to employees who are covered by that act. The Office of Federal Contract Compliance also works in the area of sex discrimination, but only as it applies to Federal contractors. The Civil Service Commission is concerned with the problems of sex discrimination in the Federal Government. And the Women's Bureau of the Labor Department contributes valuable information about women, but this, too, deals primarily with sex discrimination in the work force and related areas.

Thus it can be seen that there are a number of agencies studying the problems of sex discrimination in employment. But many of these agencies also study discrimination on the basis of race, color, religion, and national origin, as does the Civil Rights Commission.

The point is that, because of its unique position of independence and impartiality, the Civil Rights Commission can explore all areas of sex discrimination, not just discrimination in employment. As it does now with race, color, religion, and national origin, the Commission can be a clearinghouse for information concerning discrimination on the basis of sex in all areas of American life. And its important and widely read reports can do much to create a climate in which all traces of discrimination can be wiped out. We strongly believe that giving the Commission the authority to study sex discrimination would go a long way toward making equality under the law for American women and men a reality.

In order to do this, of course, the Commission would need to have adequate funds. We realize that adding sex to the other subjects of discrimination it studies would place an additional burden on the Commission's resources.

Naturally, it would benefit no one if the Commission were granted the authority to study sex discrimination and did not have the money to do the job. Therefore, we hope that the Civil Rights Commission will be given the additional staff and financing necessary to carry out its important tasks.

We are greatly encouraged to see that H.R. 12652 passed the House of Representatives by such an overwhelming majority, and that its counterpart in the Senate, S. 3121, has received widespread bipartisan support. Mr. Chairman, we respectfully urge that this measure be given, in this Congress, the high priority it deserves, so that the Civil Rights Commission can make its important contributions to help erase those remaining pockets of inequality in our Nation.

Mr. BASKIR. Thank you.

Would you like to add anything?

Ms. WIEBE. No.

Mr. BASKIR. I just have one question.

You overheard the exchange I had with the members of the Commission with respect to the additional money—

Mrs. SHRIVER. We did.

Mr. BASKIR.—and additional resources. Do you feel that the additional money and personnel that the Commission has scheduled to handle this increase in jurisdiction properly reflects the importance of the problem of sex discrimination in the United States?

Do you feel that is a proper measure?

Mrs. SHRIVER. Yes. We feel that there has been much study done in discrimination in other areas, but up to this point they have not done, really, much for women. We have really been kind of the forgotten group, and that is why I think it is necessary now to handle the problems of women as well as those of Indians.

Mr. BASKIR. So, if the budget of the commission for sex discrimination is roughly 25 percent of the total, and the personnel is about a third of the total, do you believe this gives proper dimensions to the problem of sex discrimination with respect to other areas of their jurisdiction?

It is not a disproportionate share to the problem. Is that correct?

Mrs. SHRIVER. Right. We feel, because of all the work that has been done before on many of the other minority groups, that women now are the ones where discrimination really exists and in which there has been very little, really, done.

Mr. BASKIR. Thank you very much.

The subcommittee will stand in recess, subject to the call of the Chair.

Mrs. SHRIVER. Thank you, sir.

(Whereupon, at 12:15 p.m., a recess was taken, subject to the call of the Chair.)

STATEMENT OF HOPE EASTMAN, ACTING DIRECTOR, AMERICAN CIVIL LIBERTIES UNION

The American Civil Liberties Union supports the enactment of S. 3121, which will extend the existence of the Civil Rights Commission for five years and will expand its jurisdiction to include sex discrimination. The fight to eradicate racial discrimination in our country is nowhere near completion. The battle to end sex discrimination in our society has just begun to claim its share of national attention. An extended and expanded Civil Rights Commission will be an important asset in these continuing efforts.

We need not discuss in detail the past achievements of the Commission. Others have done so and their contributions are well known. In our view, two factors emerge from these past efforts as the most important reasons for continuing the Commission's existence—its independence and its ability to investigate in depth problems which other governmental agencies have not had the time or the inclination to undertake.

The Commission is independent because its duty is to report to both the President and Congress. This independence has enabled it to report honestly and uncompromisingly on the federal government's own failures in implementing civil rights laws and policies already in existence. As such, it serves, in the words of Senator Hugh Scott, as "the conscience of the Nation." Its fact-finding ability has resulted in extensive investigations, hearings and reports which provided the necessary factual justification for portions of the most important civil rights legislation of the last decade—the Civil Rights Act of 1962, the Voting Rights Act of 1965, and the Civil Rights Act of 1968. The need for an institution to gather this kind of factual information has in no way come to an end. The problems of racial discrimination in housing, education, and employment are, if anything, more complex and difficult in the 1970's than they were in the 1960's.

Its years of experience examining racial discrimination also make the Commission uniquely competent to expand its responsibilities to include sex discrimination. Among the duties of the Commission described in the Civil Rights Act of 1957 are to study, collect information and appraise laws denying equal protection of the laws under the Constitution because of race, color, religion or national origin, and to serve as a clearinghouse for information in respect to such denials. It is essential that the same study, appraisal and collection of information be undertaken in the area of sex discrimination. Perhaps as a result of blossoming public attention, the federal government has begun to recognize its responsibilities in the area of discrimination against women. Though the Equal Rights Amendment passed Congress in March 1972, we are very far from solutions and lack vital information on the extent of discrimination in all areas of our society, including education, employment, housing, on the degree of discriminatory application of federal and state laws, and on the wide range of possible solutions. Allowing the Commission to bring its expertise to the problem would be a significant step forward.

As it develops this factual background, the Commission can also play a valuable educational role. In 1873, in *Bradwell* v. *Illinois*, 83 U.S. (16 Wall) 130, 141, three justices of the United States Supreme Court joined in denying women the right to practice law, writing of the woman's role:

"The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood." (Concurring opinion)

Although almost 100 years have passed since these words were written and despite the fact that, according to the 1970 census, women make up 43% of the adult work force, this attitude is still often a significant factor in blinding many to the impact of the pervasive sex discrimination which exists in this country today. Education and information would certainly aid in reforming these stereotypes.

Information presently available indicates the serious inequality to which women are subjected. The 1969 statistics show the medium income of women was 60% of that earned by men. Average earnings of male college graduates today is $13,320; for women the income figure is only $7,930. A 1966 EEOC report on private employers revealed that women hold only one in ten managerial positions and one in seven professional jobs, whereas they hold nearly 45% of lower paid service jobs. Civil Service Commission figures for the federal government are no better. In 1969, 77.8% of women employees found themselves in grade levels GS–1 through GS–6. Less than 2% were in GS–12 through GS–18. In education, the situation is no better. Women often need higher grades to be admitted, both to undergraduate and graduate study. Schools still maintain quota systems for women. Faculty appointments, promotions and the grant of tenure all show extremes of discrimination.

Discrimination against women in housing, insurance, mortgages, financial aid for education, faculty hiring and promotion in universities and in our systems of justice and corrections, is prevalent but more difficult to document. Careful study by the Commission will be especially important in these areas. The Commission's current projects on minority discrimination cover areas where sex discrimination is found and is in need of study. They are, for example, gathering educational data on minorities, the access of blacks to suburban housing and jobs, and the administration of justice in prisons.

It is essential that the Commission have responsibility for seeking solutions to sex discrimination if its present efforts in examining racial discrimination are to be fully effectve. It is undeniable that the problems of minority women will not be solved until both race *and* sex disappear as sources of discrimination. As the Report of the President's Task Force on Women's Rights and Responsibilities clearly indicated:

"Sex bias takes a greater economic toll than racial bias. The median earnings of white men employed year-round full-time is $7,396, of Negro men $4,777, of white women $4,279, of Negro women $3,194. Women with some college education both white and Negro, earn less than Negro men with eight years of education.

Women head 1,723,000 impoverished families, Negro males head 820,000. One-quarter of all families headed by white women are in poverty. More than half of all families headed by Negro women are in poverty. Less than a quarter of those headed by Negro males are in poverty." *A Matter of Simple Justice*, pp. 18–19 (1970).

Some have suggested that expansion of the Commission's jurisdiction in this area would merely duplicate, or even interfere with the actions of other agencies, primarily the EEOC and the Labor Department. The responsibilities of these agencies are limited to the administration of the federal laws for which they have responsibility. Where other agencies lag behind in performance, the Commission has and will continue to play an invaluable prodding role. Where discrimination exists in areas not covered by present federal laws, the Commission will be the only agency examining the problems. They have an independence which no other agency has. And because they have no program to administer, they are better equipped to do the fact-finding which can then be utilized by all the other agencies in implementing their programs.

Expansion of the jurisdiction of the Civil Rights Commission to include sex discrimination was urged by the President's Task Force on Women's Rights and Responsibilities in April 1970, and by the President himself in the State of the Union message in January 1972. The battle for equality for women has been long and tedious but has moved ahead in recent years. The lack of studies, statistics and other concrete evidence of discrimination has been a major obstacle for women in pressing their case before courts and legislatures. A clearinghouse for information is essential if the battle to eliminate sex discrimination is to be successful. S. 3121 would enable the Commission to do this job

For all of the above reasons, the ACLU urges prompt enactment of S. 3121.

STATEMENT OF SENATOR J. CALEB BOGGS, SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS, JUNE 15, 1972

Mr. Chairman, I am grateful for this opportunity to make a few remarks today in support of S. 3121, the legislation to expand the duties of the United States Commission on Civil Rights and to extend the Commission for five years. As a cosponsor of this bill, I have given it my strongest support and I urge the Subcommittee to act quickly to approve it.

The Civil Rights Commission has proven to be an effective and valuable resource of the Federal Government. Its appraisal of civil rights issues, its examination of Federal laws and policies relating to civil rights, and its investigations into complaints of denial of civil rights have all contributed to our national commitment to equal protection under the law. The Commission's less publicized but nonetheless essential work of collecting and evaluating civil rights information, and submitting reports and recommendations to the President and the Congress, have likewise served to focus attention on civil rights issues in a most constructive manner.

Despite its many diverse activities, the Commission's principal role is that of an independent, fact-finding agency.

It was originally established in 1957 to undertake an extensive study of denials of the right to vote. In the years that followed, substantial progress was made in this area. This, I am happy to note, has allowed the Commission to broaden its activities to include studies of denials of equal protection in the fields of housing, education, employment and the administration of justice.

I am especially pleased, Mr. Chairman, with the provisions of Section 4 of S. 3121. This section expands the Commission's jurisdiction to include studies and investigations of discrimination on account of sex. This expansion is a principal recommendation of the Report of the President's Task Force on the Rights and Responsibilities of Women which was issued in 1970.

This is an area that has been neglected for too long, and I am anxious that the resources and expertise of the Civil Rights Commission be brought to bear on it. I am pleased that the Commission has made plans to undertake extensive studies of sex discrimination in education programs and in hiring practices. As in the past, I know these studies will be of great value to the Congress and the Executive Branch in terms of proposing and shaping policies and legislation.

The Commission has also begun to study a number of other areas where questions of equal protection under the law have arisen. The particular problems of the Mexican-American, the Puerto Rican, the Asian-American and the American Indian are either under study or slated for examination in the near future. The Commission is also planning to look into subtler forms of discrimination arising from religious differences and ethnic heritage. A comprehensive report on Civil Rights Progress in the Past Decade is planned for next year.

Mr. Chairman, although real progress has been made in the field of civil rights, it is my belief that the work of the Civil Rights Commission has, in a sense, just begun. We have not reached a point where we can afford to let down our guard or ignore patterns of discrimination that persist. I urge the Subcommittee to act favorably on S. 3121.

Thank you, Mr. Chairman.

STATEMENT OF THE LEAGUE OF WOMEN VOTERS OF THE UNITED STATES

The League of Women Voters of the United States, with members in all 50 states, the District of Columbia, the Virgin Islands and Puerto Rico, wishes to be recorded in favor of H.R. 12652.

The League of Women Voters was organized following the final success of the extraordinary efforts of a dedicated group of citizens whose aim was to achieve suffrage for women. Since 1920, League members have worked tirelessly to overcome discriminatory practices in education, employment, housing, or voting—whether these practices were against children, women, or racial minorities. Since the 1954 school decision, members have concentrated on achieving equal opportunity for minorities.

We therefore considered establishment of the Civil Rights Commission in 1957 a major step forward in implementing civil rights statutes and in demonstrating the federal government's commitment to equal opportunity for all citizens. As a non-partisan, independent agency the Civil Rights Commission has established itself as an objective advocate for non-discriminatory practices in all aspects of American life, and the volunteer members of State Advisory Committees, representing broad segments of the community, have helped provide essential interpretation and oversight of each newly enacted civil rights law.

The League supports the work already done by the Commission, citing as an example the comprehensive report of 1970 documenting the failures of the federal government to use its structures, mechanisms and procedures to enforce adequately the civil rights laws already on the books.

New federal initiatives to improve federal agency compliance have resulted from that 1970 report. Why? Because interested citizen groups for the first time had factual evidence on which to base efforts to bring the federal establishment into compliance with the law. Without the Civil Rights Commission the general public would have no way to determine whether or not hard-won laws to protect civil rights are buried in legal code books or are put to work to effect change. The League, therefore, supports continuation of the Commission.

Because the investigation and determination of compliance with law requires continuous work over long periods of time, and because social change resulting from compliance with civil rights laws takes place slowly, the League favors extension of the Civil Rights Commission for five years. Furthermore, it is important to League members that sufficient authorization of funds be included to enable the Commission to carry out its mandates effectively.

In order for the distinguished citizens who serve on State Advisory Committees to use their time and expertise to best advantage, an adequate Civil Rights Commission field staff should be available to them.

To do the necessary work under a new mandate giving jurisdiction over sex discrimination, additional funds are required.

Asian-American and other minorities have particular problems which must be faced by the Commission in the months and years to come.

The Civil Rights Commission has many requests for timely studies in response to civil rights emergencies, such as recent prison uprisings.

The League is therefore fully in support of the authorization for $6.5 million for fiscal 1973 and $8.5 million for fiscal 1974 and each fiscal year thereafter. Were such increased support not available, the Commission would not be able to cope with any new mandates without curtailing or reducing present programs, thereby losing not only the timeliness and relevance of previously collected data, but also the momentum already built.

The existence of the Commission provides a monitoring eye on governmental activities leading to compliance with existing statutes and correction when compliance policies are inadequate. There is a persistent need for an agency which can point out progress made and pinpoint areas where discrimination persists. In addition, League members are not convinced that sufficient enforcement machinery exists to make necessary progress in civil rights. Such machinery must have an unbiased advocate; the Commission has acted in this capacity in the past and should continue so to act in the future.

League members have consistently supported citizen involvement in governmental decisions—and change through evolution, not revolution. The Civil Rights Commission stands for the kind of response to citizen needs which shows that representative government can and does work—for both the majority and minority. The members therefore stand firmly behind HR 12652 and urge favorable Congressional action to extend the Commission and to fund it adequately.

STATEMENT OF SENATOR HUGH SCOTT

Mr. Chairman, the contributions of the Commission on Civil Rights to the advancement of human rights and human dignity are well known. The Commission has been the conscience of the Nation in matters of racial equality since its creation in 1957. Commission reports and recommendations have formed the basis for important legislation, executive action and judicial opinions dealing with civil rights across the United States.

While significant strides have been taken toward securing individual civil rights since the Commission was established in 1957, there is a continuing need for this type of independent agency. The Commission has been increasingly active in focusing attention and Federal action on the problems faced by Mexican Americans, American Indians and other minority groups. Its vital work must continue.

To date, the Commission's work has been limited to issues of discrimination because of race, color, religion, and national origin. Studies have indicated, however, that widespread discrimination because of sex exists in our Nation. S. 3121, which Senator Hart and I introduced in the Senate on February 3, and H.R. 12652, which passed the House of Representatives on May 1, would meet this denial of equal rights by authorizing the Commission on Civil Rights to deal with discrimination because of sex. This provision would implement an important recommendation of the 1970 report of the President's Task Force on the Rights and Responsibilities of Women and is in accord with the President's civil rights program.

Although the jurisdiction of some Federal agencies encompasses discrimination because of sex, their activities are generally limited to discrimination in the area of employment. Studies of the full range of issues, in addition to more extensive studies of discrimination in employment, are necessary. As has been demonstrated so cogently by the Commission's record, studies and recommendations firmly grounded on authoritative facts are an essential prerequisite to legislation and other remedial relief. Further, it is important that a Federal agency be empowered to appraise the Federal performance in this area and provide a focal point for the development of affirmative action programs within the Federal Government.

The structure and work of the Commission on Civil Rights are well suited to these needs. I believe that it is both logical and necessary that the jurisdiction of the Commission be expanded to include discrimination because of sex.

I am delighted that the House of Representatives has passed legislation nearly identical to the bill introduced by Senator Hart and myself. Although the House-passed bill does not include the open-ended authorization Senator Hart and I favored, it does provide an authorization of $6.5 million for Fiscal Year 1973 and $8.5 million for Fiscal Year 1974 and thereafter. These funds will allow the Commission to continue its present action for racial equality and to expand its efforts to include discrimination on account of sex.

I would like to stress that this program has the full backing and support of the President of the United States. In his State of the Union Message, the President requested that the Commission be extended for another 5-year term. In addition, the President called for the expansion of the Commission's jurisdiction to include discrimination because of sex.

STATEMENT OF THE WOMEN'S EQUITY ACTION LEAGUE IN SUPPORT OF H.R. 12652, JUNE 15, 1972

(By Norma Raffel, Ph.D., National President, and Marguerite Rawalt, Ll.D., Chairman, Ad Hoc Committee)

The Women's Equity Action League (WEAL) is a national voluntary, non-profit organization formed to press for full enforcement of existing anti-discrimination laws affecting women, to gather and disseminate information and educational materials thereon, to seek solutions to their economic, educational and employment problems, to combat job discrimination against women by government

or private employers, working for reappraisal of Federal, State, and local laws limiting women's employment opportunities. H.R. 12652 would be a step in carrying out such purposes.

WEAL therefore supports H.R. 12652, which would have the effect of conferring upon the U.S. Civil Rights Commission jurisdiction to consider denials of equal protection of law because of sex in addition to its present jurisdiction with respect to race, color, religion and national origin.

"Equal protection of the laws" under the Fourteenth Amendment has long been withheld from women. The distinguished Chairman of the House Judiciary Committee, the Hon. Emanuel Celler, stated in 1956 during debate on the legislation which created the U.S. Civil Rights Commission that—

"The 14th Amendment to the Constitution * * * prohibits the denial by state action of the equal protection of laws, but distinctions based on sex have never been considered within the purview of this prohibition." 102 Cong. Rec. 13552, 84th Congress.

With this statement we are in full agreement. The U.S. Constitution means what the U.S. Supreme Court says it means. Distinguished members of Congress, both of the House and the Senate, advocating approval of the Equal Rights Amendment, have placed in the record complete analyses of Supreme Court decisions showing continuing and long-standing denial of the Fourteenth Amendment protection to women.[1] Constitutional scholars and teachers of constitutional law have testified before Judiciary Committees of both houses of Congress to this same effect and have advocated a constitutional amendment as the broad and conclusive guarantee of constitutional equality.[2]

Authoritative and centralized resource data is a fundamental need in achieving legal equality. Informed women and women's organizations working to throw off their legal inferiority status, have long recognized the lack of comprehensive, organized research, documentation, and centralization of authentic source materials which are prerequisite to combatting discrimination in laws and practices. Their individual efforts and data are not coordinated or centralized in a publicly available source. Data focused upon discriminatory laws and practices is scattered and piecemeal. To adequately effectuate the purposes of this Bill requires a reliable comprehensive and voluminous storage bank of information, publicly available, respecting the whole network of existing state and federal statutes and their court interpretation. This is an undertaking beyond the scope of an unfunded, volunteer group, no matter how dedicated. It is a proper job for government.

Government agencies do not now provide a centralized and comprehensive source of data focused upon discrimination and denial of constitutional protection. The laudable statistics of the Women's Bureau have not been so focused. Its studies have been factual analyses of statutes and practices without measurements for discrimination. Its prescribed duties point to the interests of "wage-earning women" to "women in industry." P.L. 259, 66th Congress. The Equal Employment Opportunity Commission is statutorily directed to elimination of sex discrimination in employment only, and limited to private employment and to larger employers. The Civil Service Commission reports and statistics are not designed to frame constitutional equal protection issues. All women, employed outside the home or inside, should be brought into protection of their property rights and their civil and political rights.

The establishment of a national clearing house of authoritative data is a proper task for the U.S. Civil Rights Commission, an assignment on an equally urgent and needed level as its present areas of concern with race, religion and national origin. Women of every race, religion, and national origin should be legally emancipated. The Civil Rights Commission by authorization, by valuable experience, by governmental support, is in position to extend its expertise of hearings, reports, and activities in educating the public, to the cause of equal legal protection of women. To that end, we urge the provision for appropriations necessary to adequately and sincerely discharge the functioning of this extra field of action.

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[1] Cong. Rec., 91st Cong., 2d Sess., pp. H–7953–7985, debate preceding passage of amendment; hearings before Senate Subcommittee on Constitutional Amendments, May 5–7, 1970, pp. 112–135 for case analyses. (Rawalt)

Cong. Rec., 92d Cong., Oct. 6, 1971, pp. H9235, et seq. Hearings, Subcommittee 4, House Judiciary Committee, March 24–31, 1971, on H.J. Res. 208, pp. 36–42 (Griffiths); pp. 194–209.

[2] Hearings before Senate Judiciary Committees, 91st Cong., Sept. 9–15, 1970, on S.J. Res. 61 and S.J. 231: p. 298 (Emerson); 312 (Dorsen); 161 (Kanowitz).

The Women's Equity Action League is gratified that President Nixon included a recommendation for this legislation in his recent message to Congress as embodied in this Bill introduced by the Chairman of the Judiciary Committee. The measure should continue to have bi-partisan support. The 1969 Report of President Nixon's Task Force on Women's Rights and Responsibilities recommended this action.

We would point out that this measure, desirable as it is, is not a substitute for the Equal Rights Amendment to the Constitution which would bring women of all races and classes within the ambit of the Constitution as human beings and citizens without restrictions or distinctions based solely upon the circumstance of having been born female. It is a colorful thread in what should be a complete tapestry of equality. This Bill would propel American women a full step higher on the escalator of constitutional recognition in this democracy.

We support passage of H.R. 12652 and emphasize the need for the authorization of "such sums as are necessary to carry out the provisions of this Act." The experience and effective work of the U.S. Civil Rights Commission, as thus extended to women, would contribute materially toward achieving our goal of "equal justice under law" which is the principle inscribed above the portals of the U.S. Supreme Court building.

SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS,
Washington, D.C., March 13, 1972.

MR. JONATHAN W. FLEMING,
Special Assistant to the Staff Director, U.S. Commission on Civil Rights, Washington, D.C.

DEAR MR. FLEMING: S. 3121, a bill to extend the Commission on Civil Rights for five years, to expand the jurisdiction of the Commission to include discrimination because of sex, to authorize appropriations for the Commission, and for other purposes, has been referred to this subcommittee. Hearings on the bill are being contemplated.

In order that we can proceed with our consideration of the proposed bill, we ask that you respond promptly to the questions contained in enclosure number 1 to this letter. The Commission is also welcome to submit any additional materials which it considers pertinent to this legislation.

Sincerely yours,

LAWRENCE M. BASKIR,
Chief Counsel and Staff Director.

U.S. COMMISSION ON CIVIL RIGHTS,
Washington, D.C., May 23, 1972.

LAWRENCE M. BASKIR,
Chief Counsel and Staff Director, Subcommittee on Constitutional Rights, U.S. Senate, Washington, D.C.

DEAR MR. BASKIR: Enclosed is information supplied in response to your letter and request dated March 13, 1972. In addition to materials supplied in response to your letter, I have enclosed an explanation of H.R. 12652 revised to incorporate changes made by Subcommittee No. 5 of the House Committee on the Judiciary and approved by the House on May 1, 1972.

We will be pleased to furnish you with any other information which you may request.

Sincerely,

JONATHAN W. FLEMING,
Special Assistant to the Staff Director.

Enclosures.

U.S. COMMISSION ON CIVIL RIGHTS—RESPONSE TO QUESTIONS ON PROGRAM AND PROPOSED CHANGES IN STATUTE OF U.S. COMMISSION ON CIVIL RIGHTS

I. Expanding the jurisdiction of the Commission to sex discrimination:

1. If sex discrimination were included in the ambit of the Commission's activities, would this call for additional expenditures? Please estimate the amount of the increase per year.

Inclusion of sex discrimination in the ambit of the Commission's jurisdiction would call for additional expenditures of $1 million in fiscal year 1973 and an additional $1.25 million in fiscal year 1974.

2. Could you estimate how long it would take for the Commission to establish a program which would have a substantial impact upon the problems of sex discrimination?

A fully funded program would begin to have significant impact upon problems of sex discrimination within one year from the time the program became fully operational. The Commission has established an in-house planning group to develop a sex discrimination program in anticipation of such an expansion in its jurisdiction. The Commission is prepared to implement this program as soon as an expansion in jurisdiction is voted by Congress and sufficient appropriations made.

The sex discrimination program, as planned, includes many of those issues and activities which have been identified as critical if progress is to be made in this area. For example, the President's 1970 Task Force on Women's Rights and Responsibilities, in recommending that the Commission's jurisdiction be expanded to include sex discrimination, noted that "perhaps the greatest deterrent to securing improvement in the legal status of women is the lack of public knowledge of the facts" and the lack of a clearinghouse for such information. Fulfilling this responsibility would be one of the Commission's priority objectives if its jurisdiction were expanded to include sex discrimination.

3. What would your program consist of?

The Commission on Civil Rights, if it is given jurisdiction to deal with sex based discrimination, proposes to undertake the following activities in this field during fiscal year 1973.

I. Incorporating sex discrimination as an issue in on-going projects and activities

Complaints.—Among the first actions of the agency will be to expand the Complaints Unit to handle an anticipated increase in the number of complaints which will be received due to the assumption of jurisdiction to deal with problems of sex based discrimination. It is anticipated that the current number of complaints (1800) processed by the Commission will double in the first year of operation with an expanded mandate.

Revising Commission Publications.—Basic civil rights information publications of the Commission will be revised to reflect the agency's responsibilities in the area of sex discrimination. These will include the Commission's compiled "Statute, Rules and Regulations of the Commission on Civil Rights", the brochure which describes the agency, and the "Annual Civil Rights Directory". In addition, the *Civil Rights Digest*, quarterly, will be expanded to include editorial content on sex discrimination.

Evaluating Federal Programs and Policies.—The Office of Federal Programs Evaluation will be expanded in staff and will monitor Federal Departments and Agencies with respect to sex discrimination on the same basis as Departments and Agencies presently are monitored for enforcement of civil rights.

Additional Professional Staff.—New professional staff will be added to the Office of General Counsel and the Technical Assistance Division of the Office of Community Programming. This latter Office provides staff support and services for the 51 Advisory Committees in each State and the District of Columbia. Other staff will be added to the Commission's liaison unit under the agency's clearinghouse program on civil rights information.

Expanding Information Services.—The Commission's Civil Rights Documentation Center and Library will begin acquisition of materials and data on sex based discrimination. Publications and programs on sex discrimination will be initiated.

II. New Studies

The Commission on Civil Rights has developed contingency plans during the past year in anticipation of an expanded mandate. It is tentatively proposed to undertake studies in some or all of the following subject areas:

1. Women's Role and Image in Television.
2. Sex Discrimination in Higher Education Programs.
3. Sex Discrimination in Elementary and Secondary Education Programs.
4. Sex Discrimination in Practices of Financial Institutions.
5. Women in the Job Market.
6. Expanded activities by State Advisory Committees to the Commission, including public meetings, information programs and reports to the Commission with recommendations for action.

During fiscal year 1974 the Commission on Civil Rights would continue the development and expansion of its sex discrimination program in the following ways:

Expansion of information activities.—During fiscal year 1974 the Commission will have in full operation an extensive information program on sex discrimination including maintenance of a documentation center for sex discrimination information, publications, films and other informational activities. This effort will be central to the Commission's obligation to collect and disseminate information.

New Studies.—The Commission will undertake the following new studies, in addition to those carrying over from the previous year, in fiscal year 1974:

1. Legal Status of Women.
2. Discriminatory "Channeling" of Women by Educational Institutions.
3. Women and Health Services.
4. Social and Economic Status of Women.
5. Sex Discrimination in the Federal Service.

4. What would distinguish your activities in this area from those of the Equal Employment Opportunity Commission, Office of Education, Justice Department, the Civil Service Commission, and other Federal agencies involved with sex discrimination?

The areas of responsibility of other Federal agencies involved with sex discrimination are briefly described below:

Equal Employment Opportunity Commission.—Enforcement of Title VII of the Civil Rights Act of 1964 which bans discrimination in access, promotion, benefits, and terms of employment by private employers, labor organizations, employment agencies and apprenticeship programs because of sex.

Civil Service Commission.—Administers implementation of E.O. 11246, as amended by E.O. 11478, prohibiting sex discrimination in Federal employment. In addition to the policy-setting and coordinating role of CSC, each department and agency is required to maintain an equal employment opportunity program involving prohibitions against sex discrimination.

Department of Labor.—Determines policy and coordinates enforcement by Federal contracting agencies of E.O. 11246, as amended by E.O. 11375, which prohibits Federal contractors and subcontractors from discriminating in any aspect of employment and requires the creation of affirmative action programs. The Department also administers the Equal Pay Act of 1963, which guarantees men and women equal pay for equal or substantially similar work. Finally, the Women's Bureau serves primarily as an information clearinghouse on the economic and educational status of women, with a mandate to promote the welfare of wage-earning women and encourage better utilization of womanpower.

Department of Justice.—Responsible for bringing suit in those cases arising from enforcement of the abovementioned statutes.

Office of Education.—As other Federal contracting agencies do, enforces E.O. 11246. Therefore, OE is primarily concerned with sex discrimination in higher education insofar as colleges and universities hold Federal contracts.

The addition of sex discrimination would give the Commission comparable jurisdiction to that of two major Federal civil rights enforcement programs, contract compliance and Title VII of the Civil Rights Act of 1964. While other agencies are concerned solely with enforcement, the Commission is charged with examining denials of equal protection under the law, appraising Federal laws and policies with respect to denials of equal protection of the laws, and making appropriate recommendations to the President and Congress. No other Federal agency enjoys such a mandate, nor is any other Federal agency empowered to handle the full range of women's issues. This is particularly important in view of critical interrelationships between women's issues, e.g., between education and employment. Especially important is the Commission's mandate to appraise the laws and policies of the Federal government. It is critical that not only the laws and policies be examined, but their implementation as well. Only the Commission performs this function on a day to day basis.

II. Extending the life of the Commission for 5 years

1. What major projects are currently underway and when are they expected to be concluded? (Please be specific as to the nationalities or minorities involved and the type of activities involved.)

The following major projects are underway:

(1) *Mexican American Education Study.*—This project consists of a questionnaire and field survey of the educational opportunities afforded Mexican American children at the elementary and secondary levels in the schools of the Southwest. It is a major effort of the Commission and has been underway for more than two and a half years. The results of the study are being published in a series

of reports. The first report, *Ethnic Isolation of Mexican Americans in the Public Schools of the Southwest*, examined the size and distribution of Mexican American enrollment, educational staff and school board membership; the placement of Mexican American educators in terms of the ethnic composition of schools and districts in which they are found. A second report, *The Unfinished Education*, analyzed the performance of schools in the Southwest in terms of the outcomes of education for students of various ethnic groups using such measures as school holding power, reading achievement, grade repetition, overageness and participation in extracurricular activities. A third report, *The Excluded Student*, is completed and was published this month. This report documents the way the educational system deals with the unique linguistic and cultural background of Mexican American students. *The Methodological Appendix to the Mexican American Education Study* is completed and is at the printer.

The Financing of Education in Texas, the fourth report in the Mexican American Education series, examines and compares financial support of education in predominantly Mexican American and Anglo districts in Texas. The report examines the property tax effort, local fund assignment and the State equalization effort as they apply to the education of Mexican Americans. The report has an extensive legal appendix which surveys the legal and Constitutional issues involved in inequities of school finance throughout the country. This report is scheduled for completion by June 30, 1972.

Classroom Interactions of Mexican Americans and Anglo Pupils.—This report compares classroom interaction of teachers with Mexican American and Anglo pupils. It is scheduled for completion in September 1972.

Relationships Report.—This report will seek to determine the relationship of various school conditions and practices to outcome of education for Mexican Americans. The report is scheduled for completion in January 1973. It involves approximately four staff members working nine months or 54 months analyzing data, making computer runs, and drafting the report.

The Summary Report.—Basic findings and the conclusions of the several reports of the Mexican American Education Study are synthesized and summarized in this final document of the series. It is scheduled for completion in June 1973.

(2) *Study of Desegregation under the Technical Assistance Provisions of Title IV of the Civil Rights Act of 1964.*—Title IV of the Civil Rights Act of 1964 established mechanisms by which financial assistance is granted to school districts to help them overcome problems incident to desegregation. These mechanisms include grants to school boards and State Departments of Education to enable both to provide assistance in resolving problems associated with the desegregation process. In addition, Title IV provides for technical assistance to be rendered by Universities.

In examining the role of Title IV as a facilitator of the desegregation process, the Commission has looked at programs developed by individual school districts, training institutes and desegregation centers established in colleges and universities, and Title IV units in State Departments of Education. The Commission has concentrated its investigation on the southern and border States, where the bulk of Title IV funds have gone. This publication involves blacks and Chicanos. It will be released in June 1972.

(3) *Pupil Transportation for Desegregation Purposes.*—This project will prepare an information-type publication for the general public on the subject of pupil transportation for desegregation purposes. The publication will provide the historical background, the legal precedents and authorities, respond to the objections, present the reasons for the use of transportation in the desegregation process, and give some hints on making it work. Estimated completion date on the preparation of the copy for publication is the end of April 1972. Both minority and majority populations will be involved insofar as busing has an impact upon them. The publication will be addressed to the general audience.

The persons working on the project will continue to monitor and gather data on this subject throughout the Summer and the beginning of school in the Fall.

(4) *Mortgage Finance and Equal Housing Opportunity.*—This study will examine the role of mortgage lending institutions in the denial of equal housing opportunities. Minorities affected will include Blacks, Spanish Speaking and American Indians. The study is scheduled for completion in November 1973.

(5) *Minority Economic Development.*—The Commission proposes to study minority economic development with the objective of making recommendations to enhance economic opportunities for minority people. The study will be based on an appraisal of present implementation of the recommendations of the Presi-

dent's Advisory Committee on Minority Business Enterprise. It also will focus on new recommendations for action to increase minority group participation in the economic mainstream of the country. This study will focus on Blacks, Spanish speaking and Indians. It will be completed in March, 1973.

(6) *The Collection and Use of Racial and Ethnic Data by Federal Program Officials.*—This report studies the collection and use of racial and ethnic data by Federal programs. The report also sets forth safeguards against abuses of such information and makes recommendations for those purposes. The report is scheduled for release in June 1972.

(7) *The Contract Compliance Program of the Department of Transportation.*—This project studies in detail the workings of the Department of Transportation's program to carry out the purposes of Executive Order 11246 requiring nondiscrimination by Federal contractors and subcontractors. This study relates to employment problems encountered by the major minority groups in the United States, i.e., Negroes, Mexican Americans, Puerto Ricans, Native Americans and Asian Americans. It is planned for release in September 1972.

(8) *Civil Rights and Federal Highway Programs.*—This is a study of the implications for minority groups of major construction programs of highways assisted by the Federal government. Route locations, displacement, compensation for property taking, full opportunity to exercise rights of protest, hearing and planning participation are examined as well as issues of whether minority groups benefit directly and indirectly from the transportation services of major arterial highways. This study is scheduled for completion in January 1973.

(9) *Suburban Access Report.*—On the basis of hearings in St. Louis, Missouri, Baltimore, Maryland, Washington, D.C., and SAC meetings on suburban access, a report is being prepared summarizing the barriers to suburban access and recommending techniques that can be used to eliminate the barriers and provide equal opportunity.

This project focused on the problems that black Americans, and Mexican Americans have had in being able to obtain equal participation in the growth and benefits of suburban America. It is estimated that this report will be completed on or about Aug. 30, 1972.

(10) *Indian Project.*—In Fiscal years 1969–1970, the Commission conducted preliminary research and investigations to gain an understanding of the problems facing American Indians, living both on and off reservations, to establish contact with the Indian community, and to learn directly from Indians what problems merit the attention of the Commission. Field trips were made by Commission staff members to the State of Washington, to Northern and Southern California, to the Navajo Reservation in Arizona and New Mexico, and to Sioux Reservations in North and South Dakota. Commission staff members interviewed a number of people, Indian and non-Indian, in Washington, D.C. who are knowledgeable about Indian affairs and problems.

In 1971–72, the Commission issued a publication entitled "American Indian Civil Rights Handbook". This publication spells out rights and remedies of special concern to Indians under Federal law, particularly the 1968 Indian Bill of Rights. Other publications to be issued are handbooks on:

Federal Programs.

The Federal Administrative Apparatus as it Pertains to Indians.

Social Services.

Legal Status of American Indians.

The Indian project will continue to gather information pertaining to the equal protection of the law as it relates to Indians through field investigations, State Advisory Committee meetings, and a possible Commission hearing. This project is projected to continue into mid Fiscal Year 1971.

(11) *Puerto Rican Project.*—In Fiscal Year 1971, the Commission began the process of factfinding on civil rights problems of persons of Spanish Surname in the Midwestern and Eastern United States. In this early phase, several community workshops, designed to provide information on equality of educational opportunity for Spanish-speaking children, were conducted. In connection with this project an English and Spanish version of a booklet explaining the uses of Title I and Title VIII (bilingual education) of the Elementary and Secondary Education Act were prepared.

In the third quarter of Fiscal Year 1971 a meeting was held in Massachusetts focusing on the concerns of the Puerto Rican communities of Boston and Springfield in the areas of education, housing, health, welfare and poverty programs. Additional meetings were held in Newark, Trenton, Hoboken and Camden, New

Jersey, to investigate the educational problems of Pureto Ricans and to look into the services renedered by anti-poverty agencies. Staff also conducted field research in a number of cities on the denial of equal protection of the law in employment, education, housing, voting, and the administration of justice.

In February 1972 the Commission held two days of hearings in New York City on equal educational opportunity for Puerto Ricans. The investigation in New York also collected information pertaining to equal employment opportunity, access to housing, and problems in the administration of justice. The information collected in State Committee meetings, and by Commission staff will provide a basis for a Commission report. This report is scheduled for completion in the first quarter of fiscal 1973.

(13) *A Study of Cairo, Ill.*—The Commission has conducted a study of the conditions found in a small midwestern community, which has seen much racial unrest and violence. The Commission will focus on the causes of polarization, and evaluate programs of the Federal Government which are available to solve or ameliorate conditions of severe racial—black-white—separation. The Commission held a hearing in Cairo, Illinois in March, 1972. A report of this hearing, and its implications for small communities throughout the Nation will be the subject of a report which should be completed in the first quarter of fiscal 1973.

(14) *Crime, Police and the Minority Community.*—In fiscal year 1971, planning started on a law enforcement project to be carried out in fiscal year 1971 and 1972. A one-day meeting was held of eight experts in various areas of the law enforcement field to advise us what direction the project should take. As planned, the project examines the role of the police in the minority community in order to evaluate police activities and community perceptions of them. We are examining various controls on police and will determine the goals, views and standards to which police conduct is now responsive. We are reviewing a number of innovative programs whose purpose is to adapt the role of the police to the needs and desires of the minority community. The project will include studies of between four and six cities of over 500,000 population, with substantial minority populations. In fiscal year 1972 investigations and staff reports on Houston, Texas, Los Angeles, California and Boston, Massachusetts will be completed. Minorities present in each city will be studied. This includes blacks, Mexican Americans, Puerto Ricans, and urban Indians. It is anticipated that one or more Commission reports will be issued in connection with this study. A hearing in fiscal year 1973, is planned in connection with this study.

(15) *Correctional Institutions and Equal Protection of the Laws.*—Beginning in the last quarter of Fiscal Year 1972, we will extend the Commission's administration of justice studies into the prisons, examining equal protection of the laws as they affect prisoners generally and minority group prisoners particularly. This project will have a duration of twelve months. We will study the internal disciplinary systems of prisons to see if they violate prisoners' civil rights. We will look at conditions in local jails as well as State and Federal prisons. We will examine the treatment of white prisoners vis-a-vis minority prisoners, and we will look into allegations of segregation in certain prisons. We will determine whether prisoners are provided access to lawyers and adequate legal counsel concerning their rights once they are in prison. We will examine the treatment of prisoners belonging to groups such as the Black Panthers, Brown Berets, and Black Muslims to see if prisoners who are members of these groups are treated differently or if their rights are being abused because of membership. Finally, we will examine the practices of parole boards to see if minority group prisoners are given equal treatment and equal opportunity for parole.

The phrase "minority group" refers to all minority groups located in the geographical confines of the prison system to be studied. Prison systems will be selected to provide information on a full range of minority groups.

2. What are the major projects proposed for the future and the length of time each is expected to require for completion? (same specificity as Question 1)

The following are new research and study projects which the Commission on Civil Rights proposes to undertake during Fiscal Year 1973:

1. A study appraising the implementation of the recommendations of the President's Advisory Committee on Minority Business Enterprise and examining other methods to increase minority group participation in the economic mainstream of the country. This study will encompass the major minority groups in the country with particular emphasis upon Blacks, Mexican Americans and Puerto Ricans. It is scheduled for completion in early fiscal year 1974.

2. Minority Group Participation in Labor Organizations will be studied during fiscal year 1973 as a major project of the Commission. This study will cover participation by Blacks, Mexican Americans, Puerto Ricans and women (if the Commission's jurisdiction is expanded to include sex discrimination.) The project is scheduled for completion in the third quarter of fiscal year 1974.

3. Discrimination against minority groups by institutions of higher education and in Federally-assisted programs of higher education will be studied in fiscal year 1973. The project is scheduled for completion at the end of the fiscal year.

4. A major Commission hearing on American Indians and their civil rights will be held during the second or third quarter of the fiscal year. This hearing will become a major factfinding effort by the Commission in its proposed study and report on the civil rights problems of American Indians.

5. A new program on Asian American problems will be developed by the Commission during fiscal year 1973. The purpose of this project will be to develop and publish information on the status of the Asian American communities in the United States today. The first phase of the project will be completed during fiscal year 1973 or early in fiscal year 1974. During that time the Commission will determine what specific studies and reports should be undertaken which would make a contribution toward the growing problems of this rapidly increasing population.

6. A Report on Civil Rights Progress in the Past Decade will be written and published during fiscal year 1973. Preliminary data from the 1970 Census indicates that many members of minority groups in the United States have improved their economic and social condition during the past ten years, many others have not. The Commission will analyze Census data to determine what segments of minority group populations have improved their material status and which have not. An effort will be made to relate this progress to the enactment and enforcement of the major civil rights legislation of the 1960s.

7. During fiscal year 1973 the Commission plans to undertake extensive exploratory studies in the areas of religious and national origin discrimination unrelated to color. This effort will be preparatory to initiating a major project in this area of the Commission's jurisdiction in late fiscal year 1973 or fiscal year 1974.

3. How many field offices are currently in operation?

The Commission on Civil Rights presently has field offices operational in the following cities: Atlanta, Ga.; Chicago, Ill.; Los Angeles, Calif.; New York City, N.Y.; San Antonio, Tex.; and Washington, D.C.

4. How many State Advisory Committees currently are functioning?

The Commission has appointed State Advisory Committees in every State and the District of Columbia. The following State Advisory Committees are considered to be active and functioning: Alabama, California, Connecticut, Arizona, Delaware, Georgia, Illinois, Indiana, Maryland, Washington, Maine, New York, North Carolina, North Dakota, New Mexico, Oklahoma, Ohio, Texas, New Jersey, Arkansas, Florida, Rhode Island, Massachusetts, Virginia, Wisconsin, South Dakota, Tennessee, Iowa, District of Columbia, Idaho, Mississippi, Montana, New Hampshire, Oregon, South Carolina, Pennsylvania, and Vermont.

5. How many allegations were investigated under Sections 1975c(1) and (5) in the last year?

In fiscal year 1972, to date, seven complaints have been received under 1975c(5) and none under 1975c(1). To date, the Commission has received 909 complaints under 1975c(5) and 341 complaints under 1975c(1).

In addition to specific complaints, which the Commission has referred to the Department of Justice, the Commission was involved in monitoring the enforcement of the Voting Rights Act of 1965, as amended.

During the Spring of 1971 the Commission monitored Department of Justice enforcement of Section 5 of the Voting Rights Act of 1965. The Commission investigated allegations of impropriety in Mississippi re-registration and re-apportionment. The Commission reported its findings and comments to Congress on June 2, 1971 in the testimony of Howard A. Glickstein, then Staff Director of the Commission, before Subcommittee No. 4 of the House Judiciary Committee.

The Commission also monitored elections in Mississippi in August 1971.

6. What studies have been made appraising the policies of Federal agencies with respect to denials of equal protection within the past year?

Virtually each study previously listed in Question II above has a component that appraises Federal agencies and their performance with respect to denials of equal protection.

The past year has seen the issuance of two major reports specifically evaluating the effectiveness with which Federal agencies carry out their civil rights responsibilities. The first of these was the "Federal Civil Rights Enforcement Effort—7 Months Later" (November 1971). These studies reevaluated the civil rights performance of almost thirty Federal agencies including such diverse organizations as the Office of Management and Budget, the Interstate Commerce Commission, the Law Enforcement Assistance Administration of the Department of Justice, the Office of Federal Contract Compliance of the Department of Labor, and the Department of Housing and Urban Development.

These two reports were follow up efforts to the Commission's major study appraising the Federal Civil Rights Enforcement Effort released in November 1970. This study initially appraised the performance of over 40 Federal Departments and Agencies with civil rights enforcement responsibilities.

Home Ownership for Lower Income Families.—A detailed study of the effect of the Section 235 home ownership program. Staff conducted intensive data collection and analyses in four major metropolitan areas and published a Report focusing on the impact of the Section 235 program. The Report was published in June, 1971.

The Housing Division also has conducted analyses on ten (10) proposed regulations by Federal regulatory agencies and submitted detailed comments to the appropriate agency. A separate memorandum describes these comments.

7. How has the Commission performed its function as a national clearinghouse for information with respect to denials of equal protection.

Under its mandate to serve as a National Clearinghouse for civil rights information, the U.S. Commission on Civil Rights disseminates such information on a nationwide scale through several methods.

One of its most useful means of communicating the nature of civil rights problems has been through its Clearinghouse Publications. Thirty-five such publications have been issued to date which range in content from a study of Racism in America by Anthony Downes, a former member of the National Advisory Committee on Civil Disorders, to a narrative on the life of rural blacks in the South based on the Commission's 1968 hearing in Montgomery, Alabama to a vignette on the personal experiences of a Mexican American in an urban atmosphere written by Reubén Salazar just before his tragic death. The Clearinghouse Publications cover all areas of the Commission's concern: administration of justice, education, employment, health services, housing, and voting. Several of them are summaries of Commission Statutory Reports which outline the major points made in the larger report. They seek to present civil rights problems in factual, readable style and their circulation has been large.

According to the Documentation Department of the Government Printing Office, several of them are among the publications considered to be in demand. This is a good rating considering that they compete with many thousands of Government publications on every conceivable subject. Several of the Clearinghouse Publications that are devoted to the unique problems of the Spanish speaking are available in both English and Spanish. A list of the Clearinghouse Publications is attached. The titles indicate their scope and content. The Commission makes a point of having these, as well as all of its publications, presented with original, appropriate, and tasteful art work.

Considered a Clearinghouse Publication, but, by its special purpose, standing by itself in the clearinghouse function is *The Civil Rights Digest*, a quarterly magazine which offers significant information on civil rights matters by presenting articles on current events, reports of Government and non-Government activities, book reviews, and analyses of civil rights developments in all sections of the country. The magazine has a circulation of approximately 30,000 for each issue. That it has made its way among scholars and laymen is evident by the increasing number of requests received for permission to quote excerpts from it. This, incidentally, is true of others of our Clearinghouse Publications.

A second, and equally important clearinghouse function, has been the development of liaison with private groups throughout the country. Such groups are kept informed of Commission activities and are encouraged to make use of its publications, exhibit, and films as resource materials for their own programs.

The response has been gratifying. Since members of groups find one of the best sources of obtaining information is through convention programs of their organizations, the Commission has accelerated its efforts to be represented at such meetings by staff attendance, when feasible, but always by its continuously expanding exhibit and the distribution of its publications.

The Commission's exhibit deserves special mention as a means of fulfilling its clearinghouse function.

It is not static. Its original exhibit piece has been replaced by interchangeable panels based on the concept of "Freedom." "Freedom From", the stereotype situations that most minorities have been restricted to, and "Freedom To", the right to equal citizenship that every American is guaranteed under the Constitution. Using this series of interchangeable, photographic panels, the exhibit can now reflect the basic theme or subject of a given convention, meeting, or seminar and add a new dimension, through the visual process, to the primary concern of the group. Among the groups serviced in this way are:

International Association of Official Human Rights Agencies
League of Women Voters
International City Management Association
National Association of Media Women
Rural Sociological Society
National Congress of American Indians
American Political Science Association
YMCA
American G.I. Forum
National Association for the Advancement of Colored People
International Union of Electrical, Radio and Machine Workers
Association for the Study of Negro Life and History
National Council of Jewish Women
National Council of Catholic Women
National Council of Negro Women
National Baptist Convention
Federal Executive Institute
CSC
Delta Sigma Theta Sorority
National Urban League
National Association of Social Workers
American Psychological Association
Meat Cutters and Butcher Workmen of North American/AFL–CIO
National Alliance of Postal and Federal Employees
National Association of Intergroup Relations Officials
American Historical Association
National Newspaper Publishers Association
United Automobile Workers/AFL–CIO
Special Libraries Association
Puerto Rican Leadership Conference
Michigan Association of State and Federal Program Specialists
American Association for Higher Education
American Federation of State, County, and Municipal Employees
American Jewish Committee
American Jewish Congress
United Steelworkers of America
Japanese American Citizens League
National Organization of Women
U.S. Catholic Conference
LULAC
National School Board Association
Girl Scouts of America
YWCA
National Education Association

The Commission's films have proved to be a widely acclaimed means of fulfilling the clearinghouse function.

Although "Cycle to Nowhere", based on the 1968 Alabama hearing was released in 1969, the film continues to have strong appeal and numerous requests are received for it. More than 10,000 persons have viewed this film since its release. It has been used as a training vehicle by private organizations and Federal Agencies such as the Department of Agriculture's Soil and Conservation Service. The "Mississippi Hearing" film is also being widely circulated as requests continue to come in for its use.

Requests for speakers and for briefing sessions have increased as a result of the Commission's clearinghouse activities. Staff members have conducted sessions

for teachers, teachers' aides, Federal employees of other agencies, private organizations, and high school and college students. Many persons representing these groups and many such entire groups have visited the Commission to learn at firsthand about its activities and programs. Among these have been groups under the auspices of the Washington Study Program Office of the United Methodist Church, the William Penn House (a Quaker organization), the Mennonite Central Committee, and nearby universities and public schools. Topics discussed when these groups come include racism, Federal legislation affecting civil rights, school desegregation and the question of busing, the progress of Federal agencies in the area of civil rights, contract compliance, housing, job discrimination, and the general activities and role of the Commission in effecting the development of a society in which denial of equal rights has been eliminated. These topics reflect the interests of the groups involved and concretely point to the scope of influence which our clearinghouse function has generated.

The use of the Commission's mailing lits in a new and more effective form is an important means of carrying out the clearinghouse function. The Commission's mailing list consists of government officials at all levels, including members of Congress, and institutions and individuals concerned with or working in the field.

By converting the mailing list from Addresser-Printer plates to an Optical Scanning System, the Commission has been able to expedite its mailing. The conversion has noticeably reduced dollar costs, man hours, time lags, and the general maintenance necessary to the handling of a mailing list.

The Commission's Library and Documentation Center contributes an important service to the clearinghouse function. Its 8,000 books and 12,000 periodicals (which, of course, do not represent permanent figures) provide one of the most comprehensive sources of civil rights information in the country. It is used by persons engaged in scholarly research and is consulted by private organizations and Government agencies for civil rights material. Needless to say, it is used extensively by the Commission staff but it also attracts outside persons who are not connected with civil rights groups *per se* but who have occasion to use our facilities in connection with aspects of their own work. For instance, leading law and business firms send employees here to obtain information on the subject. Our Library is listed in directories put out by all private and Government agencies as a major civil rights resource.

PROPOSED AUTHORIZATION FOR APPROPRIATIONS FOR COMMISSION ON CIVIL RIGHTS

H.R. 12652, as passed by the House of Representatives, would extend the term of the Commission on Civil Rights for five years, expand its jurisdiction to include discrimination on account of sex and provide for other statutory changes to conform certain per diem payments with those of comparable agencies. The bill was amended by the Subcommittee to authorize appropriations of $6,500,000 for fiscal year 1973 and $8,500,000 for fiscal year 1974 and each year thereafter. The formulation of this request is in keeping with past authorizations for appropriations for the Commission.

The authorization for appropriations for fiscal year 1973 will enable the Commission to request the full amount of appropriations requested by the President in his Budget Message for FY 73 ($4,821,000, as amended) as well as $1 million for the first year of operation with an expanded jurisdiction covering sex discrimination, as tentatively allowed by the Office of Management and Budget, and will allow for an Asian American Program and for studies in response to civil rights emergencies. The Office of Management and Budget has no objection to an authorization in the amount of $6,500,000.

The increased authorization for fiscal year 1974 will enable the Commission to reach its mid-point program goals without encountering delays in new authorizing legislation and supplemental appropriations. The major requirements of our increased budget for fiscal year 1974 are for meeting anticipated demands on Commission resources for an adequate sex discrimination program without taking away resources for our programs in the areas of discrimination on account of race, color, religion and national origin, for completion of expansion of our field staff and for other major program needs, including improved research technological capabilities.

If, in future years the Commission feels that an increase in the authorization for appropriations is necessary, appropriate legislation will be sought. In the meantime, the Commission requests that the figure $8,500,000 be authorized for each fiscal year until expiration of the Commission in FY 78.

U.S. COMMISSION ON CIVIL RIGHTS

EXPLANATION OF REQUEST FOR AUTHORIZATION FOR APPROPRIATIONS FISCAL YEAR 1973

The Commission on Civil Rights requests an authorization for appropriations for fiscal year 1973 in the amount of $6,500,000.

This amount represents these categories:

(1) Budget request of the President for the Commission on Civil Rights	[1] $4,821,000
(2) Specific costs of H.R. 12652 other than program	[2] 5,000
(3) Contingent salary increase	160,000
(4) Cost of sex discrimination program	[3] 1,000,000
(5) Contingent programs:	
Asian American program	514,000
Response to Civil Rights emergencies	
Total authorization request	6,500,000

[1] Includes $174,000 supplemental appropriations request for salary increases mandated, January 1972. See Schedule A.
[2] Adjusted for less than a 12-month fiscal year (approximately 6 months). See Schedule B.
[3] See Schedule C.

U.S. COMMISSION ON CIVIL RIGHTS, REQUEST FOR APPROPRIATION FISCAL YEAR 1973, BY OBJECT CLASSIFICATION

	Request	Increase
Personnel compensation:		
Permanent positions [1]	$2,927,000	$448,000
Positions other than permanent [2]	237,000	60,000
Other personnel compensation [3]	34,000	4,000
Special personal service payments [4]	2,000	1,000
Total personnel compensation	3,200,000	512,000
Personnel benefits [5]	245,000	40,000
Travel	350,000	95,000
Transportation of things [6]	7,000	4,000
Rent,[7] communications,[8] utilities	279,000	72,000
Printing and reproduction [9]	301,000	152,000
Other services [10]	367,000	114,000
Supplies and materials [11]	47,000	6,000
Equipment [12]	25,000	11,000
Total appropriations request	4,821,000	1,006,000

[1] This represents an estimated increase in permanent positions from 176 to 216.
[2] Temporary and part-time employees, commission consultants and experts, and commissioners.
[3] Primarily employee overtime.
[4] Reimbursable details, such as the payment to a person detailed temporarily from another agency.
[5] Retirement, social security, and health benefits.
[6] Includes transportation of materials to and from hearing sites and the movement of household goods when an employee of the Commission transfers to a field office.
[7] Rent applies to space rental for new positions in Washington and in field offices, rental of meeting rooms for hearings and meetings and reproduction equipment rental.
[8] Total communications cost is estimated as $168,250 for fiscal 1972; an increase of $ [illegible]3,393 is predicted for 1973.
[9] Costs of printing reports of Commission and State advisory committees.
[10] This item includes program contracts and contractual services. The GSA service contract for payroll, financial, reporting, security investigations, messenger and other office services, costs, the Commission $3[illegible],000 in fiscal 1972, it is estimated at $41,000 in fiscal 1973.
[11] This item includes library purchases and periodical subscriptions.
[12] Item includes office machines and furniture.

Note: This appropriations request is the amount requested in the budget for fiscal year 1973, as amended, it does not reflect an allowance of $1,000,000 contingent upon legislation to amend the jurisdiction of the Commission on Civil Rights to study and collect information on sex discrimination.

Schedule B

U.S. Commission on Civil Rights

Fiscal year 1973 costs of H.R. 12652

[Estimated cost for 6 months]

Increasing witness fees [1]	$1,000
Increasing Commissioners' per diem salary [2]	3,000
Increasing rate for consultants [3]	1,000
Increase for sex discrimination [4]	1,000,000
Total	1,005,000

[1] Increasing witness fees from $6.00 per day to $20.00 per day, the amount paid witnesses in the courts of the United States.
[2] Increasing Commissioners' salaries from $100 per day to the daily rate of Level IV of the Federal Executive Salary Schedule.
[3] Increasing the maximum rate for consultants from $100 per day to the daily rate of the maximum step of a GS–15, $127,28.
[4] See attached Schedule C and Table "Sex Discrimination FY 73."

Schedule C

U.S. Commission on Civil Rights

SEX DISCRIMINATION PROGRAM FISCAL YEAR 1973

The Commission on Civil Rights, if it is given jurisdiction to deal with sex based discrimination, proposes to undertake the following activities in this field during fiscal year 1973.

I. Incorporating sex discrimination as an issue in on-going projects and activities

Complaints.—Among the first actions of the agency will be to expand the Complaints Unit to handle an anticipated increase in the number of complaints which will be received due to the assumption of jurisdiction to deal with problems of sex based discrimination. It is anticipated that the current number of complaints (1800) processed by the Commission will double in the first year of operation with an expanded mandate.

Revising Commission Publications.—Basic civil rights information publications of the Commission will be revised to reflect the agency's responsibilities in the area of sex discrimination. These will include the Commission's compiled "Statute, Rules and Regulations of the Commission on Civil Rights", the brochure which describes the agency, and the "Annual Civil Rights Directory." In addition, the *Civil Rights Digest*, quarterly, will be expanded to include editorial content on sex discrimination.

Evaluating Federal Programs and Policies.—The Office of Federal Programs Evaluation will be expanded in staff and will monitor Federal Departments and Agencies with respect to sex discrimination on the same basis as Departments and Agencies presently are monitored for enforcement of civil rights.

Additional Professional Staff.—New professional staff will be added to the Office of General Counsel and the Technical Assistance Division of the Office of Community Programming. This latter Office provides staff support and services for the 51 Advisory Committees in each State and the District of Columbia. Other staff will be added to the Commission's liaison unit under the agency's clearinghouse program on civil rights information.

Expanding Information Services.—The Commission's Civil Rights Documentation Center and Library will begin acquisition of materials and data on sex based discrimination. Publications and programs on sex discrimination will be initiated.

II. New Studies

The Commission on Civil Rights has developed contingency plans during the past year in anticipation of an expanded mandate. It is tentatively proposed to undertake studies in some or all of the following subject areas:

1. Women's Role and Image in Television.
2. Sex Discrimination in Higher Education Programs.
3. Sex Discrimination in Elementary and Secondary Education Programs.
4. Sex Discrimination in Practices of Financial Institutions.
5. Women in the Job Market.

6. Expanded activities by State Advisory Committees to the Commission, including public meetings, information programs and reports to the Commission with recommendations for action.

Sex discrimination, fiscal year 197.:

	New costs
Complaints	$40, 500
Revision of publications	111, 512
Evaluating Federal programs	60, 768
State advisory committee programs	125, 000
Women and administration of justice	125, 000
Non-legal studies on status of women	250, 000
Liaison with private groups and general public	93, 024
Establishing data bank on sex discrimination	173, 024
Total	978, 428
Total authorization request for sex discrimination	1, 000, 000

PROPOSED ASIAN AMERICAN PROGRAM

The Problem.—The Asian American minorities have not been militantly vocal in the past; however, the situation is rapidly changing. The atmosphere in the Chinatowns is explosive; growing unrest is manifest in the criminal activities of Chinese youth gangs. The major source of pressure is the sudden influx of Asian immigrants. An examination of the Asian immigrants entering the United States at the Los Angeles port of entry alone gives an idea as to the tremendous influx of Asians emigrating to the United States.

	1960	1970	Increase percent
Koreans	862	4, 610	435
Chinese	3, 225	11, 073	243
Filipinos	4, 620	15, 362	233
Japanese	13, 297	16, 904	27

The heart of San Francisco Chinatown has an estimated population of 45,000 people who are contained in a 20 square block area, one of the highest population densities in the United States. In 1960, the Chinese in San Francisco numbered 36,445; by 1975 the Chinese population is expected to reach 75,000 persons or more. In the New York Chinatown nearly one-quarter of the present 45,000 residents arrived in this country in the last two years.

The Japanese-American Citizens League has said in a recent statement:

"It is frustrating to discover how very little pertinent information has been gathered concerning the Asian American problems. The information provided is scanty when compared to the attention and study available of other minority groups who, because of the attention afforded them, are receiving subsequent aid. The lack of data reflecting the conditions of Asian American communities further indicates the lack of government emphasis placed on this segment of our population."

Program.—A Commission program on Asian Americans would involve the following activities:

1. Factfinding by State Advisory Committees to the Commission.

State Committees in California, New York, Washington, would conduct open meetings to hear from Asian American citizens, local and State officials and other relevant persons. Reports to the Commission would be prepared.

2. Report by the Commission on Problems of Asian Americans.

This report would be based on State Advisory Committee reports and field investigations by Commission staff as well as collection of data from other sources.

The total cost of such a program would be approximately $250,000. If the Commission determined to hold a hearing on Asian American problems the cost would increase depending upon the scope and depth of the investigations upon which the hearing would be based.

RESPONSE TO CIVIL RIGHTS EMERGENCIES

The Commission on Civil Rights since 1967 has never had an authorization for appropriations which would enable it to undertake significant work in response to requests to study major civil rights issues of immediate national concern.

As things now stand, a timely response to major new developments often is impossible. Under extreme conditions the Commission on rare occasion has dropped work on ongoing projects in order to devote necessary resources to a priority problem. However, such actions are costly and disruptive.

Authorization request fiscal year 1974 increase

(Fiscal year 1973 authorization)	($6,500,000)
Fiscal year 1974 increase:	
Expansion of field program (see attached estimate of cost)	498,000
Phase II sex discrimination program (see attached estimate of cost)	1,250,000
Additional program needs [1]	252,000
Authorization request fiscal year 1974	8,500,000

[1] These are program needs over and above those programed for expansion of the field staff and for assumption of jurisdiction over sex discrimination. It includes funds for printing and contractual costs and would afford the Commission the flexibility to request supplemental appropriations for new projects and for unforeseen contingencies without curtailing ongoing programs and projects.

EXPANSION OF FIELD PROGRAM FISCAL YEAR 1974

The basic objective of the field program in fiscal year 1974 is to have all eight regional field offices staffed so that every Advisory Committee to the Commission in each of the 50 States and the District of Columbia will be able to conduct an adequate program and to fulfill the obligation of the Advisory Committee to report to the Commission on developments in its State.

As the need for civil rights legislation continues to be met, the reviewing and monitoring of enforcement and compliance becomes increasingly important. The State Advisory Committees to the Commission are exceptionally well suited for carrying out the important role of finding out what is happening at the local level by relating complaints and other information with an examination of equal opportunity programs in a given community or State. The published reports of the Advisory Committees are forwarded to the Commission as well as to State and local officials and Members of Congress.

In carrying out its goals for the proposed five-year extension of the Commission, the Commission expects that its State Advisory Committees will play an important role in developing Commission program in the areas of its expanded mandate to study sex discrimination as well as in the full development of the Commission's mandate to study denials of equal protection of the laws on account of race, color, religion and national origin.

This will require approximately 26 new permanent positions in fiscal year 1974 together with the support and other requirements engendered by increased staff. The total cost of the increase is projected at $498,000.

PHASE II—SEX DISCRIMINATION PROGRAM FISCAL YEAR 1974

During fiscal year 1974 the Commission on Civil Rights would continue the development and expansion of its sex discrimination program in the following ways:

Expansion of information activities.—During fiscal year 1974 the Commission will have in full operation an extensive information program on sex discrimination including maintenance of a documentation center for sex discrimination information, publications, films and other informational activities. This effort will be central to the Commission's obligation to collect and disseminate information.

New Studies.—The Commission will undertake the following new studies, in addition to those carrying over from the previous year, in fiscal year 1974:

1. Legal Status of Women.
2. Discriminatory "Channeling" of Women by Educational Institutions.
3. Women and Health Services.
4. Social and Economic Status of Women.
5. Sex Discrimination in the Federal Service.

FIVE-YEAR PROGRAM

The Commission on Civil Rights has a number of major program goals which it hopes to accomplish during the next five years. Among them are these ten goals:

I. Completion of Studies on the "Unfinished Business Agenda" of the Commission.
II. Full development of the Commission's mandate in the field of sex discrimination.
III. Completion of the expansion of the Field Program so that every State Advisory Committee to the Commission and the Commission's regional offices are fully supported.
IV. Directing increased attention to the civil rights enforcement responsibilities of State and Local Governments.
V. Continuation and expansion of programs and studies in areas of civil rights problems of Mexican Americans, Puerto Ricans, Native Americans and Asian Americans.
VI. Institution of major studies on the subject of discrimination on account of religion.
VII. Institution of major studies on discrimination on account of national origin.
VIII. Development of the Agency's capability to utilize new research technology in the field of civil rights.
IX. Major research into basic causes of racial and minority discrimination in society and developing new approaches to promoting compliance with civil rights.
X. Continuation of the intensive monitoring of the Federal civil rights enforcement effort.

The Commission has established its broad five year program goals in the context of its fourteen year history. Originally, the Commission undertook to study denials of the right to vote on account of race and color. Although its first report in 1959 covered other subjects as well as the principal findings and recommendations awaited by Congress and the Nation were in the field of voting. This focus led the Commission naturally to concentrate on denials of equal protection in the South and against Blacks.

In succeeding years the Commission maintained its efforts to seek redress of grievances of black Americans living under a *de jure* segregated system. At the same time the Commission gave increased attention to denials of equal protection of the laws in other areas of the Nation and against minority groups in addition to black Americans. Through its evolving program the Commission undertook new studies of denials of equal protection in the fields of housing, employment, education, administration of justice and against minority groups including American Indians, Mexican Americans and Puerto Ricans. Paralleling this growth has been an increasing capability on the part of the Commission to study intensively the complicated operations of government bureaucracies and programs to dissect those aspects of substantive government operations which work denials of equal protection of the laws to citizens who are of minority groups.

The ten program goals outlined are intended to carry out a full development of the Commission's mandate as stated in the Civil Rights Act of 1957 and the proposed amendment to that statute giving the Commission jurisdiction to study denials of equal protection of the laws on account of sex. Thus, the Commission would undertake programs and studies in unexercised areas of its jurisdiction as in denials of equal protection of the laws on account of religion and national origin. In addition, the Commission has made priority commitments to undertake programs on problems of Asian American groups and to continue programs on problems of Native Americans, Mexican Americans and Puerto Ricans.

As the only Federal agency charged with a major responsibility for conducting research in the field of civil rights, the Commission plans to undertake a substantial expansion of its capacity to do research in this field. Research technology today makes extensive use of computers. This is expensive. Under its present budget allocations the Commission is unable to do extensive analysis of data by computer. For example, the Mexican American Education Study can utilize only a fraction of the data collected because the Commission does not have sufficient funds for the extensive programing of data required. The lack of this capacity seriously hinders, and eventually will weaken the accuracy and reliability of its research.

Another major thrust of the Commission's program is based upon its view that State and local governments need to strengthen their civil rights enforcement programs. Most of the burden of carrying out this effort will fall upon the Commission's State Advisory Committees and its regional field staff.

DULUTH BUSINESS AND PROFESSIONAL WOMEN'S CLUB,
Duluth, Minn., June 12, 1972.

Hon. SAM J. ERVIN, Jr.,
Senate Judiciary Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR ERVIN: We understand that H.R. 12652 was passed by the House of Representatives on May 1st and that this bill will be acted upon by the Senate sometime in June.

As this bill gives the Civil Rights Commission authority to study sex discrimination and also extends the life of the Commission beyond 1972 it can affect many working women. We, therefore, would very much appreciate all you can do to see that it is passed upon by the Senate in the exact form approved by the House.

Sincerely,

MARGARET A. NORMANDY,
Chairman, Legislative Committee.

INTERSTATE ASSOCIATION OF COMMISSIONS
ON THE STATUS OF WOMEN,
Washington, D.C., June 27, 1972.

Hon. SAM J. ERVIN, Jr.,
Chairman, Subcommittee on Constitutional Rights, Judiciary Committee, U.S. Senate, Washington, D.C.

DEAR SENATOR ERVIN: The Interstate Association of Commissions on the Status of Women urges your support of S. 3121, a bill to extend the life of the U.S. Commission on Civil Rights, to expand its jurisdiction to include sex discrimination, and to fund it adequately to support this added responsibility. We ask that this letter be included in the record of hearings on S. 3121.

The Interstate Association, the nationwide federation of Commissions on the Status of Women in the states, represents the interests of millions of women who desire the elimination of sex discrimination. At our Second Annual Conference in Minneapolis earlier this month, the Association discussed the need for coordinated studies of the nature and extent of sex discrimination in a wide variety of fields, and reaffirmed our position that the jurisdiction of the Civil Rights Commission should be expanded to include inquiry into sex discrimination.

The Civil Rights Commission, we believe, can play a decisive role in assembling needed information about sex discrimination and also in monitoring legislation designed to end discrimination. Federal agencies with current responsibilities to combat sex discrimination have fragmented jurisdiction; no single body correlates the analyses and actions of private employers, governmental contractors, and government itself. The Civil Rights Commission can fulfill the need for:

Monitoring of progress and problems in implementation of federal programs directed at both public and private sectors.

Recommendations to remedy abusive patterns at all levels, both public and private, especially to assist states in re-drafting laws to comply with the principle of the Equal Rights Amendment.

Investigation of sex discrimination in civil matters, for example in practices relating to alimony, child support and custody of children.

Investigation of sex discrimination in the criminal justice system.

Investigation of sex-biased stereotypes in educational materials and in the media.

Preparation of reports of findings, and dissemination to the general public and to appropriate groups.

An organized, recognized central clearinghouse for exchange of information regarding laws and court interpretations thereof, institutions, policies, and practices.

We believe that the Civil Rights Commission, due to its impartiality, experi-

ence and expertise in these activities applied to race discrimination and due to its preparedness to deal with sex discrimination authoritatively, comprehensively and persuasively, is the appropriate agency to undertake these responsibilities. We are confident that with the extension of jurisdiction provided in S. 3121 the Commission on Civil Rights will help to end social, economic and political discrimination due solely to sex. For these reasons, we urge your support of S. 3121.

Sincerely,

JOY R. SIMONSON, *President.*

LEADERSHIP CONFERENCE ON CIVIL RIGHTS,
Washington, D.C., June 14, 1972.

Hon. SAM J. ERVIN,
U.S. Senate, Old Senate Office Building,
Washington, D.C.

DEAR SENATOR ERVIN: On behalf of the Leadership Conference on Civil Rights, I wish to urge prompt and favorable consideration by the Senate Judiciary Subcommittee on Constitutional Rights of S. 3121, the bill that would extend the life of the U.S. Civil Rights Commission for five years and expand its jurisdiction to include discriminations based on sex.

During the fifteen years of its existence the Commission has proved its value many times. Its investigations into the discrimination suffered by the nation's minority groups, its many reports and statements have done much to focus national attention on injustices and to help Congress formulate programs for correcting those injustices.

Giving the Commission authority to inquire into the discriminations that many women suffer simply because of their sex is a logical expansion of its concerns. Obviously, the Commission will need additional funds to meet additional responsibilities and we support the full authorizations in S. 3121.

I am sure the 127 national labor, civil rights, religious, civic and women's groups that participate in the Leadership Conference are united in their endorsement of this bill. We hope you will do all in your power to see that it is reported out to the Senate in its present form as quickly as possible.

Sincerely,

ROY WILKINS, *Chairman.*

COMMONWEALTH OF PENNSYLVANIA,
COMMISSION ON THE STATUS OF WOMEN,
Harrisburg, Pa., June 15, 1972.

Hon. SAM ERVIN,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR ERVIN: It is our understanding that the Subcommittee on Civil Rights will be reporting H.R. 12652 to the full Senate Judiciary Committee this week. This bill is identical to S. 3121, introduced by Senators Scott and Hart on February 3, 1972.

While significant strides have been taken toward securing individual civil rights since the Civil Rights Commission was established in 1957, there remains a continuing need for this type of independent agency.

There is also a need to expand the authority of the Commission so that it can function in the area of sex discrimination.

Although some Federal agencies and laws encompass discrimination because of sex, these laws are generally limited to discrimination in the area of employment. Studies of the full range of issues, in addition to more extensive studies of discrimination in employment are necessary.

The Commission's record in providing authoritative studies and recommendations for legislation in the field of civil rights demonstrates its capability to provide this kind of information in the area of sex discrimination as well, so that Federal laws and policies can be fully appraised and recommendations made for necessary change.

We, therefore, respectfully urge the Senate Judiciary Committee to report this vital bill to the floor of the Senate with its full endorsement.

Sincerely yours,

ARLINE LOTMAN,
Executive Director.

92D CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPORT No. 92-1444

COMMISSION ON CIVIL RIGHTS

SEPTEMBER 26, 1972.—Ordered to be printed

Mr. CELLER, from the the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 12652]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 12652) to extend the life of the Commission on Civil Rights, to expand the jurisdiction of the Commission to include discrimination because of sex, to authorize appropriations for the Commission, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 1, 2, 3, 4, 5, 6, 7, and 10.

That the House recede from its disagreement to the amendments of the Senate numbered 8 and 9, and agree to the same.

EMANUEL CELLER,
JACK BROOKS,
WILLIAM L. HUNGATE,
WILLIAM M. MCCULLOCH,
EDWARD HUTCHINSON,
Managers on the Part of the House.

PHILIP A. HART,
ROMAN HRUSKA,
HUGH SCOTT,
HIRAM L. FONG,
Managers on the Part of the Senate.

83-006

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 12652) to extend the life of the Commission on Civil Rights, to expand the jurisdiction of the Commission to include discrimination because of sex, to authorize appropriations for the Commission, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

Amendments numbered 1 through 7: Delete technical renumbering changes proposed by the Senate and appropriate only if amendment numbered 10 had been retained.

Amendment numbered 8: Authorizes Civil Rights Commission appropriation for fiscal year 1973 of $5,500,000, as proposed by the Senate, instead of $6,500,000, as proposed by the House.

Amendment numbered 9: Authorizes annual Civil Rights Commission appropriation for fiscal years 1974 through 1978 of $7,000,000, as proposed by the Senate, instead of $8,500,000, as proposed by the House.

Amendment numbered 10: Senate recedes.

EMANUEL CELLER,
JACK BROOKS,
WILLIAM L. HUNGATE,
WILLIAM M. MCCULLOCH,
EDWARD HUTCHINSON,
Managers on the Part of the House.

PHILIP A. HART,
ROMAN L. HRUSKA,
HUGH SCOTT,
HIRAM L. FONG,
Managers on the Part of the Senate.

○

H. Rept. 92-1444

Calendar No. 955

92D CONGRESS
2D SESSION

H. R. 12652

[Report No. 92–1006]

IN THE SENATE OF THE UNITED STATES

MAY 2, 1972

Read twice and referred to the Committee on the Judiciary

AUGUST 1, 1972

Reported by Mr. HRUSKA, with amendments

[Omit the part struck through and insert the part printed in italic]

AN ACT

To extend the life of the Commission on Civil Rights, to expand the jurisdiction of the Commission to include discrimination because of sex, to authorize appropriations for the Commission, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—EXTENSION OF LIFE OF COMMISSION ON CIVIL RIGHTS

~~That section~~ *SEC. 101. Section* 102 (j) of the Civil Rights Act of 1957 (42 U.S.C. 1975a (j); 71 Stat. 635), as amended, is further amended by striking therefrom the first and second sentences and substituting therefor the following: "A witness attending any session of the Commission shall

be paid the same fees and mileage that are paid witnesses in the courts of the United States."

SEC. ~~2.~~ *102.* Section 103 (a) of the Civil Rights Act of 1957 (42 U.S.C. 1975b (a) ; 71 Stat. 635), as amended, is further amended by striking therefrom "the sum of $100 per day for each day spent in the work of the Commission," and substituting therefor "a sum equivalent to the compensation paid at level IV of the Federal Executive Salary Schedule, pursuant to section 5315 of title 5, United States Code, prorated on a daily basis for each day spent in the work of the Commission,".

SEC. ~~3.~~ *103.* Paragraph (1) of subsection (a) of section 104 of the Civil Rights Act of 1957 (42 U.S.C. 1975c (a) ; 71 Stat. 635), as amended, is further amended by inserting immediately after "religion," the following: "sex," and paragraphs (2), (3), and (4) of subsection (a) of such section 104 are each amended by inserting immediately after "religion" the following: ", sex".

SEC. ~~4.~~ *104.* Section 104 (b) of the Civil Rights Act of 1957 (42 U.S.C. 1975c (b) ; 71 Stat. 635), as amended, is further amended by striking therefrom "January 31, 1973" and substituting therefor "the last day of fiscal year 1978".

SEC. ~~5.~~ *105.* Section 105 of the Civil Rights Act of 1957 (42 U.S.C. 1975d; 71 Stat. 636), as amended, is further amended as follows:

In section 105(a) by striking out in the last sentence thereof "as authorized by section 15 of the Act of August 2, 1946 (60 Stat. 810; 5 U.S.C. 55a), but at rates for individuals not in excess of $100 per diem," and substituting therefor "as authorized by section 3109 of title 5, United States Code, but at rates for individuals not in excess of the daily equivalent paid for positions at the maximum rate for GS–15 of the General Schedule under section 5332 of title 5, United States Code".

SEC. ~~6.~~ *106.* Section 106 of the Civil Rights Act of 1957 (42 U.S.C. 1975c; 71 Stat. 636), as amended, is further amended to read as follows:

"SEC. 106. For the purposes of carrying out this Act, there is authorized to be appropriated for the fiscal year ending June 30, 1973, the sum of ~~$6,500,000,~~ *$5,500,000*, and for each fiscal year thereafter through June 30, 1978, the sum of ~~$8,500,000."~~ *$7,000,000.*"

TITLE II—PROTECTION OF CONSTITUTIONAL RIGHTS OF GOVERNMENT EMPLOYEES

SEC. 201. It shall be unlawful for any officer of any executive department or any executive agency of the United States Government, or for any person acting or purporting to act under his authority, to do any of the following things:

(a) To require or request, or to attempt to require or request, any civilian employee of the United States serving

in the department or agency, or any person seeking employment in the executive branch of the United States Government, to disclose his race, religion, or national origin, or the race, religion, or national origin of any of his forebears: Provided, however, That nothing contained in this subsection shall be construed to prohibit inquiry concerning the citizenship of any employee or person if his citizenship is a statutory condition of his obtaining or retaining his employment: Provided further, That nothing contained in this subsection shall be construed to prohibit inquiry concerning the national origin or citizenship of any such employee or person or of his forebears, when such inquiry is deemed necessary or advisable to determine suitability for assignment to activities or undertakings related to the national security within the United States or to activities or undertakings of any nature outside the United States.

(b) To state or intimate, or to attempt to state or intimate, to any civilian employee of the United States serving in the department or agency that any notice will be taken of his attendance or lack of attendance at any assemblage, discussion, or lecture held or called by any officer of the executive branch of the United States Government, or by any person acting or purporting to act under his authority, or by any outside parties or organizations to advise, instruct, or indoctrinate any civilian employee of the United States serving

in the department or agency in respect to any matter or subject other than the performance of official duties to which he is or may be assigned in the department or agency, or the development of skills, knowledge, or abilities which qualify him for the performance of such duties: Provided, however, That nothing contained in this subsection shall be construed to prohibit taking notice of the participation of a civilian employee in the activities of any professional group or association.

(c) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to participate in any way in any activities or undertakings unless such activities or undertakings are related to the performance of official duties to which he is or may be assigned in the department or agency, or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties.

(d) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to make any report concerning any of his activities or undertakings unless such activities or undertakings are related to the performance of official duties to which he is or may be assigned in the department or agency, or to the development of skills, knowledge, or abilities which qualify him for the performance of

such duties, or unless there is reason to believe that the civilian employee is engaged in outside activities or employment in conflict with his official duties.

(e) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person applying for employment as a civilian employee in the executive branch of the United States Government, to submit to any interrogation or examination or to take any psychological test which is designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters: Provided, however, That nothing contained in this subsection shall be construed to prevent a physician from eliciting such information or authorizing such tests in the diagnosis or treatment of any civilian employee or applicant where such physician deems such information necessary to enable him to determine whether or not such individual is suffering from mental illness: Provided further, however, That this determination shall be made in individual cases and not pursuant to general practice or regulation governing the examination of employees or applicants according to grade, agency, or duties: Provided further, however, That nothing contained in this subsection

shall be construed to prohibit an officer of the department or agency from advising any civilian employee or applicant of a specific charge of sexual misconduct made against that person, and affording him an opportunity to refute the charge.

(f) To require or request, or attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person applying for employment as a civilian employee in the executive branch of the United States Government, to take any polygraph test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

(g) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to support by personal endeavor or contribution of money or any other thing of value the nomination or the election of any person or group of persons to public Office in the Government of the United States or of any State, district, Commonwealth, territory, or possession of the United States, or to attend any meeting held to promote or support the activities or undertakings of any political party of the United States or of any State, district, Commonwealth, territory, or possession of the United States.

(h) To coerce or attempt to coerce any civilian employee of the United States serving in the department or agency to invest his earnings in bonds or other obligations or securities issued by the United States or any of its departments or agencies, or to make donations to any institution or cause of any kind: Provided, however, That nothing contained in this subsection shall be construed to prohibit any officer of any executive department or any executive agency of the United States Government, or any person acting or purporting to act under his authority, from calling meetings and taking any action appropriate to afford any civilian employee of the United States the opportunity voluntarily to invest his earnings in bonds or other obligations or securities issued by the United States or any of its departments or agencies, or voluntarily to make donations to any institution or cause.

(i) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to disclose any items of his property, income, or other assets, source of income, or liabilities, or his personal or domestic expenditures or those of any member of his family or household: Provided, however, That this subsection shall not apply to any civilian employee who has authority to make any final determination with respect to the tax or other liability of any person, cor-

poration, or other legal entity to the United States, or claims which require expenditure of moneys of the United States: Provided further, however, That nothing contained in this subsection shall prohibit the Department of the Treasury or any other executive department or agency of the United States Government from requiring any civilian employee of the United States to make such reports as may be necessary or appropriate for the determination of his liability for taxes, tariffs, custom duties, or other obligations imposed by law.

(j) To require or request, or to attempt to require or request, any civilian employee of the United States embraced within the terms of the proviso in subsection (i) to disclose any items of his property, income, or other assets, source of income, or liabilities, or his personal or domestic expenditures or those of any member of his family or household other than specific items tending to indicate a conflict of interest in respect to the performance of any of the official duties to which he is or may be assigned.

(k) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, who is under investigation for misconduct, to submit to interrogation which could lead to disciplinary action without the presence of counsel or other

person of his choice, if he so requests: Provided, however, That a civilian employee of the United States serving in the Central Intelligence Agency or the National Security Agency may be accompanied only by a person of his choice who serves in the agency in which the employee serves, or by counsel who has been approved by the agency for access to the information involved.

(l) To discharge, discipline, demote, deny promotion to, relocate, reassign, or otherwise discriminate in regard to any term or condition of employment of, any civilian employee of the United States serving in the department or agency, or to threaten to commit any of such acts, by reason of the refusal or failure of such employee to submit to or comply with any requirement, request, or action made unlawful by this Act, or by reason of the exercise by such civilian employee of any right granted or secured by this Act.

SEC. 202. It shall be unlawful for any officer of the United States Civil Service Commission, or for any person acting or purporting to act under his authority, to do any of the following things:

(a) To require or request, or to attempt to require or request, any executive department or any executive agency of the United States Government, or any officer or employee

serving in such department or agency, to violate any of the provisions of section 1 of this Act.

(b) To require or request, or to attempt to require or request, any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, or any person applying for employment in the executive branch of the United States Government, or any civilian employee of the United States serving in any department or agency of the United States Government, to submit to any interrogation or examination or to take any psychological test which is designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters: Provided, however, That nothing contained in this subsection shall be construed to prevent a physician from eliciting such information or authorizing such tests in the diagnosis or treatment of any civilian employee or applicant where such physician deems such information necessary to enable him to determine whether or not such individual is suffering from mental illness: Provided further, however, That this determination shall be made in individual cases and not pursuant to general practice or regulation governing the examination of employees or applicants according to grade, agency, or duties: Provided

further, however, That nothing contained in this subsection shall be construed to prohibit an officer of the Civil Service Commission from advising any civilian employee or applicant on a specific charge of sexual misconduct made against that person, and affording him an opportunity to refute the charge.

(c) To require or request, or to attempt to require or request, any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, or any person applying for employment in the executive branch of the United States Government, or any civilian employee of the United States serving in any department or agency of the United States Government, to take any polygraph test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

SEC. 203. It shall be unlawful for any commissioned officer, as defined in section 101 of title 10, United States Code, or any member of the Armed Forces acting or purporting to act under his authority, to require or request, or to attempt to require or request, any civilian employee of the executive branch of the United States Government under his authority or subject to his supervision to perform any of the acts or

submit to any of the requirements made unlawful by section 1 of this Act.

SEC. 204. Whenever any officer of any executive department or any executive agency of the United States Government, or any person acting or purporting to act under his authority, or any commissioned officer as defined in section 101 of title 10, United States Code, or any member of the Armed Forces acting or purporting to act under his authority, violates or threatens to violate any of the provisions of section 1, 2, or 3 of this Act, any civilian employee of the United States serving in any department or agency of the United States Government, or any person applying for employment in the executive branch of the United States Government, or any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, affected or aggrieved by the violation or threatened violation, may bring a civil action in his own behalf or in behalf of himself and others similarly situated, against the offending officer or person in the United States district court for the district in which the violation occurs or is threatened, or the district in which the offending officer or person is found, or in the United States District Court for the District of Columbia, to prevent the threatened violation or to obtain redress against the

consequences of the violation. The Attorney General shall defend all officers or persons sued under this section who acted pursuant to an order, regulation, or directive, or who, in his opinion, did not willfully violate the provisions of this Act. Such United States district court shall have jurisdiction to try and determine such civil action irrespective of the actuality or amount of pecuniary injury done or threatened, and without regard to whether the aggrieved party shall have exhausted any administrative remedies that may be provided by law, and to issue such restraining order, interlocutory injunction, permanent injunction, or mandatory injunction, or enter such other judgment or decree as may be necessary or appropriate to prevent the threatened violation, or to afford the plaintiff and others similarly situated complete relief against the consequences of the violation. With the written consent of any person affected or aggrieved by a violation or threatened violation of section 1, 2, or 3 of this Act, any employee organization may bring such action on behalf of such person, or may intervene in such action. For the purposes of this section, employee organizations shall be construed to include any brotherhood, council, federation, organization, union, or professional association made up in whole or in part of civilian employees of the United States and which has as one of its purposes dealing with departments, agencies, commissions,

and independent agencies of the United States concerning the condition and terms of employment of such employees.

SEC. 205. (a) There is hereby established a Board on Employees' Rights (hereinafter referred to as the "Board"). The Board shall be composed of three members, appointed by the President, by and with the advice and consent of the Senate. The President shall designate one member as chairman. No more than two members of the Board may be of the same political party. No member of the Board shall be an officer or employee of the United States Government.

(b) The term of office of each member of the Board shall be five years, except that (1) of those members first appointed, one shall serve for five years, one for three years, and one for one year, respectively, from the date of enactment of this Act, and (2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(c) Members of the Board shall be compensated at the rate of $75 a day for each day spent in the work of the Board, and shall be paid actual travel expenses and per diem in lieu of subsistence expenses when away from their usual places of residence, as authorized by section 5703 of title 5, United States Code.

(d) Two members shall constitute a quorum for the transaction of business.

(e) The Board may appoint and fix the compensation of such officers, attorneys, and employees, and make such expenditures as may be necessary to carry out its functions,

(f) The Board shall make such rules and regulations as shall be necessary and proper to carry out its functions.

(g) The Board shall have the authority and duty to receive and investigate written complaints from or on behalf of any person claiming to be affected or aggrieved by any violation or threatened violation of this Act and to conduct a hearing on each such complaint. Within ten days after the receipt of any such complaint, the Board shall furnish notice of the time, place, and nature of the hearing thereon to all interested parties. The Board shall render its final decision with respect to any complaint within thirty days after the conclusion of its hearing thereon.

(h) Officers or representatives of any Federal employee organization in any degree concerned with employment of the category in which any alleged violation of this Act occurred or is threatened shall be given an opportunity to participate in each hearing conducted under this section, through submission of written data, views, or arguments, and in the discretion of the Board, with opportunity for oral presentation. Government employees called upon by any

party or by any Federal employee organization to participate in any phase of any administrative or judicial proceeding under this section shall be free to do so without incurring travel cost or suffering loss in leave or pay; and all such employees shall be free from restraint, coercion, interference, intimidation, or reprisal in or because of their participation. Any periods of time spent by Government employees during such participation shall be held and considered to be Federal employment for all purposes.

(i) Insofar as consistent with the purposes of this section, the provisions of subchapter II of chapter 5 of title 5, United States Code, relating to the furnishing of notice and manner of conducting agency hearings, shall be applicable to hearings conducted by the Board under this section.

(j) If the Board shall determine after hearing that a violation of this Act has not occurred or is not threatened, the Board shall state its determination and notify all interested parties of such determination. Each such determination shall constitute a final decision of the Board for purposes of judicial review.

(k) If the Board shall determine that any violation of this Act has been committed or threatened by any civilian officer or employee of the United States, the Board shall immediately (1) issue and cause to be served on such officer or employee an order requiring such officer or employee

to cease and desist from the unlawful act or practice which constitutes a violation, (2) endeavor to eliminate any such unlawful act or practice by informal methods of conference, conciliation, and persuasion, and (3) may—

(A) (i) in the case of the first offense by any civilian officer or employee of the United States, other than any officer appointed by the President, by and with the advice and consent of the Senate, issue an official reprimand against such officer or employee or order the suspension without pay of such officer or employee from the position or office held by him for a period of not to exceed fifteen days, and (ii) in the case of a second or subsequent offense by any such officer or employee, order the suspension without pay of such officer or employee from the position or office held by him for a period of not to exceed thirty days or order the removal of such officer or employee from such position or office; and

(B) in the case of any offense by any officer appointed by the President, by and with the advice and consent of the Senate, transmit a report concerning such violation to the President and the Congress.

(l) If the Board shall determine that any violation of this Act has been committed or threatened by any officer of any of the Armed Forces of the United States, or any

person purporting to act under authority conferred by such officer, the Board shall (1) submit a report thereon to the President, the Congress, and the Secretary of the military department concerned, (2) endeavor to eliminate any unlawful act or practice which constitutes such a violation by informal methods of conference, conciliation, and persuasion, and (3) refer its determination and the record in the case to any person authorized to convene general courts-martial under section 822 (article 22) of title 10, United States Code. Thereupon such person shall take immediate steps to dispose of the matter under chapter 47 of title 10, United States Code (Uniform Code of Military Justice).

(m) Any party aggrieved by any final determination or order of the Board may institute, in the district court of the United States for the judicial district wherein the violation or threatened violation of this Act occurred, or in the United States District Court for the District of Columbia, a civil action for the review of such determination or order. In any such action, the court shall have jurisdiction to (1) affirm, modify, or set aside any determination or order made by the Board which is under review, or (2) require the Board to make any determination or order which it is authorized to make under subsection (k), but which it has refused to make. The reviewing court shall set aside any finding, conclusion, determination, or order of the Board as to which

complaint is made which is unsupported by substantial evidence on the record considered as a whole.

(n) The Board shall submit, not later than March 31 of each year, to the Senate and House of Representatives, respectively, a report on its activities under this section during the immediately preceding calendar year, including a statement concerning the nature of all complaints filed with it, its determinations and orders resulting from hearings thereon, and the names of all officers or employees of the United States with respect to whom any penalties have been imposed under this section.

(o) There are authorized to be appropriated sums necessary, not in excess of $100,000, to carry out the provisions of this section.

SEC. 206. Nothing contained in this Act shall be construed to prohibit an officer of the Central Intelligence Agency or of the National Security Agency from requesting any civilian employee or applicant to take a polygraph test, or to take a psychological test, designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters. or to provide a personal financial statement, if the Director of the Central

Intelligence Agency or his designee or the Director of the National Security Agency or his designee makes a personal finding with regard to each individual to be so tested or examined that such test or information is required to protect the national security.

SEC. 207. No civilian employee of the United States serving in the Central Intelligence Agency or the National Security Agency, and no individual or organization acting in behalf of such employee, shall be permitted to invoke the provisions of sections 4 and 5 without first submitting a written complaint to the agency concerned about the threatened or actual violation of this Act and affording such agency one hundred and twenty days from the date of such complaint to prevent the threatened violation or to redress the actual violation: Provided, however, That nothing in this Act shall be construed to affect any existing authority of the Director of Central Intelligence under section 403(c), of title 50, United States Code, and any authorities available to the National Security Agency under section 833 of title 50, United States Code, to terminate the employment of any employee.

SEC. 208. Nothing in this Act shall be construed to affect in any way the authority of the Directors of the Central Intelligence Agency or the National Security Agency to protect or withhold information pursuant to statute or executive

order. The personal certification by the Director of the agency that disclosure of any information is inconsistent with the provision of any statute or Executive order shall be conclusive and no such information shall be admissible in evidence in any interrogation under section 1(k) or in any civil action under section 4 or in any proceeding or civil action under section 5.

SEC. 209. This Act shall not be applicable to the Federal Bureau of Investigation.

SEC. 210. Nothing contained in sections 4 and 5 shall be construed to prevent establishment of department and agency grievance procedures to enforce this Act, but the existence of such procedures shall not preclude any applicant or employee from pursuing the remedies established by this Act or any other remedies provided by law: Provided, however, That if under the procedures established, the employee or applicant has obtained complete protection against threatened violations or complete redress for violations, such action may be pleaded in bar in the United States district court or in proceedings before the Board on Employee Rights: And provided further, That if an employee elects to seek a remedy under either section 4 or section 5, he waives his right to proceed by an independent action under the remaining section.

SEC. 211. If any provision of this Act or the application of any provision to any person or circumstance shall be held invalid, the remainder of this Act or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected.

Passed the House of Representatives May 1, 1972.

Attest: W. PAT JENNINGS,

Clerk.

Calendar No. 955

92D CONGRESS
2D SESSION

H. R. 12652

[Report No. 92–1006]

AN ACT

To extend the life of the Commission on Civil Rights, to expand the jurisdiction of the Commission to include discrimination because of sex, to authorize appropriations for the Commission, and for other purposes.

MAY 2, 1972

Read twice and referred to the Committee on the Judiciary

AUGUST 1, 1972

Reported with amendments

Approved For Release 2005/08/03 : CIA-RDP81-00818R000100050001-8

7 August 1972

AMENDMENTS TO H. R. 12652 (SENATE VERSION)

FOR CIA AND NSA EXEMPTIONS

(a) Amend section 209 as follows:

"This Act shall not be applicable to the Federal Bureau of Investigation, the Central Intelligence Agency and the National Security Agency."

(b) Strike the proviso in section 201(k).

(c) Strike sections 206, 207 and 208.

Approved For Release 2005/08/03 : CIA-RDP81-00818R000100050001-8

UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

IN REPLY PLEASE REFER TO

YOUR REFERENCE

August 10, 1972

Honorable Emanuel Celler
Chairman, House Judiciary Committee
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

It is with grave concern that I write you concerning H. R. 12652, a bill to extend the life of the Commission on Civil Rights. This concern relates to the insertion entitled "Protection of Constitutional Rights of Government Employees," the language of which is identical to S. 1438, and previous bills which have received Senate approval.

The Civil Service Commission has reported to the Subcommittee on Employee Benefits of the House Post Office and Civil Service Committee on S. 1438 and similar bills, and has expressed strong objections to what we regard as major faults in the bills.

We do not, I can assure you, take any exception to the stated purpose of these bills, which is to protect civilian employees of the executive branch of the government in the enjoyment of their constitutional rights and to prevent unwarranted invasions of their privacy. We agree that under no circumstances should the price of Federal employment be relegation of the individual to "second class citizenship." But we feel very strongly that the proposed legislation goes beyond the protection of constitutional rights; that it would seriously infringe the proper right and responsibility of managers to see that the business of government is performed effectively and efficiently; that it is completely out of keeping with long-established principles of sound judicial administration in that it provides for summary judicial intervention into the management of the executive branch before the individual has exhausted his available administrative remedy, and that the establishment of a new agency, "The Board of Employee Rights" has a number of faults, the most notable of which is a conflict of statutory responsibilities with those of the Civil Service Commission.

While our reasons for objection are stated in greater detail in my testimony on H. R. 7199, H. R. 7969, and S. 1438 (copy attached), I should like to highlight just a few of the problems created by the present language. It would prevent a supervisor in a munitions storage depot from questioning an employee about forbidden smoking on the job

until the employee's attorney was present. It could bar inquiries about national security, or employee safety. It would, for all practical purposes, negate the ethical conduct program within the executive branch. It could preclude proper investigation of complaints of discrimination because of race, religion or national origin. By calling for a "prejudgment" by the Attorney General before he decided whether to defend an accused Federal supervisor in a lawsuit, it would tend to prejudice a fair hearing in court in the case of a supervisor who would not be defended by the Attorney General.

While we strongly feel that the defects are so serious that the "Protection of Constitutional Rights of Government Employees" insert to H. R. 12612 should not become law, I believe that the legitimate purposes of the insert could be achieved by a suitable, carefully drawn bill. The House Post Office and Civil Service Committee has already given much attention to, and held hearings on, this matter. I would strongly recommend therefore that the matter be divorced from the urgencies of H. R. 12652.

Sincerely yours,

Robert E. Hampton
Chairman

Enclosure

Approved For Release 2005/08/03 : CIA-RDP81-00818R000100050001-8

OLC 72-0949

23 August 1972

MEMORANDUM FOR THE RECORD

SUBJECT: Conversation with Mr. David Carper, House of Representatives Legislative Counsel's Office

1. I called David Carper, in the House Legislative Counsel's office, to obtain his opinion on the various procedural aspects pertaining to House action on the Ervin bill as it was added as Title II of H. R. 12652. I also picked up from Carper some interesting information on his involvement with the Ervin-type legislation in the House.

2. Carper told me that he had been one of the three persons (two were members of the House Post Office and Civil Service Committee staff) who redrafted the Ervin bill for Representative Hanley's Subcommittee of the House Post Office and Civil Service Committee. He said it was the feeling of this trio that the bill, as it passed the Senate, set forth many employee rights but said nothing about the rights of supervisors. One of their goals was to correct this deficiency. He also commented that, as far as he knew, the Hanley bill was generally acceptable to the Civil Service Commission and contained only one wrinkle that was troublesome to the Administration. This concerns the section which contained certain specific exemptions (including the FBI, CIA and NSA) and provided for such other exemptions as the President may determine. The provision for further exemption ran into difficulty in the House Post Office and Civil Service Committee which inserted language requiring that Presidential exemptions be recommended to the Congress. This insertion in turn brought forth an objection from the Office of Management and Budget.

3. Carper said if the House accepts any legislation on employees' rights, it should insist on the Hanley version minus the Committee insertion. He is at a loss, however, as to how this might be accomplished since the Post Office and Civil Service Committee seems happy to have this problem transferred to the Judiciary Committee and the Judiciary Committee (not having held hearings on the subject) has no desire to deal with the substance of Government employee rights.

4. We talked at some length about the various approaches which could be taken on the question of the "germaneness" of Title II of H. R. 12652. Carper reviewed the provisions of House Rules 20 (clause 3), 28 (clause 3), and a resolution which has been introduced by Representative Colmer on this subject (H. Res. 1103). He pointed out that there are precedents for various interpretations of the Rules and the only way to determine how they would be interpreted in this instance is by an inquiry to the House Parliamentarian. This can be done only by a member or a committee staff member.

5. From this discussion it appears that if Chairman Celler decides to report H. R. 12652 out of conference with a notation that there is a "technical disagreement" on Title II, this would precipitate a floor discussion and a subsequent decision as to whether Title II was germane to H. R. 12652 as it passed the House. This would appear to satisfy the desire which Ervin expressed to Celler to have an "up or down vote on the bill on the House floor." But the general feeling among those I have talked with is that if a vote were taken at this time, the Ervin bill would probably pass the House.

6. Carper seemed to feel that at this juncture since neither the Post Office and Civil Service Committee nor the Judiciary Committee want to get involved in substantive discussions of the Ervin bill, Title II of H. R. 12652 could pass the House because of a lack of any substantive action against it.

STAT

GEORGE L. CARY, JR.
Deputy Legislative Counsel

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Original - Subject
1 - OGC
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Approved For Release 2005/08/03 : CIA-RDP81-00818R000100050001-8

OLC 72-0980

Executive Registry
72-4526/1

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D. C. 20505

OFFICE OF THE DIRECTOR

6 SEP 1972

The Honorable Emanuel Celler, Chairman
Committee on the Judiciary
House of Representatives
Washington, D. C. 20515

My dear Mr. Chairman:

I am writing to tell you of my very serious concern over the effects upon this Agency of certain provisions of Title II of H. R. 12652. I believe that Chairman Hampton, of the Civil Service Commission, has written to you expressing his concern over the effects of this legislation on agencies of the Executive Branch in general, and I fully subscribe to the points I am told he made in his letter. In addition, however, I am especially disturbed over the impact this legislation would have on existing statutory responsibilities and authorities relating to the protection of intelligence sources and methods.

This Agency's views on bills identical to this proposed legislation have been made known to the Chairman of the Senate Constitutional Rights Subcommittee and the Chairman and members of the House Employee Benefits Subcommittee, and I enclose for your information copies of the relevant correspondence. Chairman Hebert and Chairman Mahon, who, as you know, share congressional oversight responsibility for this Agency, have fully supported our position in this respect and have on an earlier occasion communicated their views to Chairman Dulski, of the House Post Office and Civil Service Committee.

Because I am convinced that the legislation in question could have a major adverse impact on the security discipline and operational effectiveness of this Agency, I would very much appreciate an opportunity to

meet with you at your convenience to explain in detail the reasons for our concern.

Sincerely,

Richard Helms

Richard Helms
Director

Enclosures

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OLC/GLC:smg (1 Sept 72)

ROUTING AND RECORD SHEET

Executive Registry
72-4526/1

SUBJECT: (Optional)

FROM:	EXTENSION	NO.
Acting Legislative Counsel		STAT
		DATE 1 September 1972

TO: (Officer designation, room number, and building)	DATE RECEIVED	DATE FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1. Director	6 SEP 1972			
2.				
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6. OLC for Landcary				
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An item of pending business before Congress when it returns from recess will be conference committee action on the "Ervin bill" rider to the Civil Rights Commission legislation. The Civil Service Commission is tackling the sticky procedural question of "germaneness" of the rider. If this issue is lost and the Ervin bill is not deleted, CSC will press for amendments which will include specific exemptions for CIA, NSA and FBI.

Former Representative, now Judge, Poff has spoken with Chairman Celler about our particular problems with the bill and Poff, along with the staff of the Post Office & Civil Service and Judiciary Committees recommend that you address correspondence along the lines of the attached letter to Celler to make this a matter of record. Our letter has been coordinated with the CSC and with the DDS and OGC.

We also plan to ask Chairmen Hebert and Mahon to speak with Celler on our behalf. STAT

George L. Cary, Jr.
Acting Legislative Counsel

FORM 3-62 610 USE PREVIOUS EDITIONS ☐ SECRET ☐ CONFIDENTIAL ☐ INTERNAL USE ONLY ☐ UNCLASSIFIED

UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

IN REPLY PLEASE REFER TO

YOUR REFERENCE

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U. S. House of Representatives
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Robert E. Hampton
Chairman

Enclosure

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